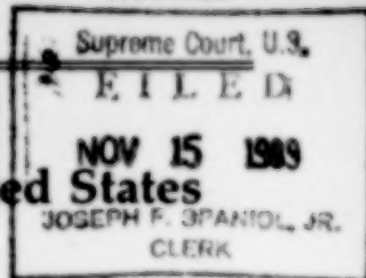


In The
Supreme Court of the United States
 October Term, 1989



EDDIE KELLER; RAYMOND BROSTERHOUS; DAN M. KINTER; DAVID LAMPE; GARRETT BEAUMONT; CHRISTOPHER L. FAIRCHILD; JOHN A. GRODNIER; CHRISTOPHER N. HEARD; LEONARD C. HOAR, JR.; J. ROBERT JIBSON; CHARLES P. JUST; DAROLD D. PIEPER; THOMAS HUNTER RUSSELL; NANCY L. SWEET; MICHAEL J. WEINBERGER; DAVID E. WHITTINGTON; THOMAS R. YANGER; WARD A. CAMPBELL; DONALD C. MEANY; ASSEMBLYMAN PATRICK J. NOLAN; and A. WELLS PETERSEN,

Petitioners,

v.

STATE BAR OF CALIFORNIA, a public corporation; ANTHONY M. MURRAY; PATRICIA GREENE; GIRT K. HIRSCHBERG; LELAND R. SELNA, JR.; GEOFFREY VAN LOUKS; THOMAS W. ERES; JOHN H. COSTANZO; GEORGE W. COUCH, III; BURKE M. CRITCHFIELD; THOMAS R. DAVIS; DIXON Q. DERN; RUTH CHURCH GUPTA; DALE E. HANST; LEONARD HERR; ROBERT A. HINE; MARTA MACIAS; PHILLIP SCHAFER; CRAIG A. SILBERMAN; DANIEL J. TOBIN; JAMES D. WARD; and JOON HEE RHO,

Respondents.

On Writ of Certiorari in the Supreme Court of California

JOINT APPENDIX
 VOLUME I

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Petition for Certiorari filed May 24, 1989.
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217 PD

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CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

October 25, 1982 - Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed in Sacramento County Superior Court.

March 29, 1983 - Second Amended Answer filed by defendants in Sacramento County Superior Court.

November 22, 1983 - Motion for Summary Judgment filed by defendants in Sacramento County Superior Court.

November 23, 1983 - Motion for Partial Summary Judgment filed by plaintiffs in Sacramento County Superior Court.

March 19, 1984 - Order granting defendants' motion for summary judgment and denying plaintiffs' motion for partial summary judgment issued by Sacramento County Superior Court.

May 24, 1984 - Judgment in favor of defendants entered by Sacramento County Superior Court.

June 18, 1984 - Notice of Appeal filed by plaintiffs in Sacramento County Superior Court.

May 23, 1986 - Decision of the California Court of Appeal, Third Appellate District, reversing the judgment of the Sacramento County Superior Court.

July 2, 1986 - Petition for Review filed by defendants in California Supreme Court.

August 28, 1986 - Review granted by the California Supreme Court.

February 23, 1989 - Decision of the California Supreme Court reversing the judgment of the California Court of Appeal, Third Appellate District.

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IN THE SUPERIOR COURT OF THE
 STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SACRAMENTO

EDDIE KELLER; RAYMOND)
 BROSTERHOUS; DAN M. KINTER;)
 and DAVID LAMPE,) Civ. No. 307168
 Petitioners and Plaintiffs,)
 v.) PETITION FOR
 STATE BAR OF CALIFORNIA, a) WRIT OF MAN-
 public corporation; ANTHONY M.) DATE AND COM-
 MURRAY; PATRICA GREENE; GIRT) PLAINT FOR
 K. HIRSCHBERG; LELAND R.) DECLARATORY
 SELNA, JR.; GEOFFREY VAN) AND INJUNC-
 LOUKS; THOMAS W. ERES; JOHN) TIVE RELIEF
 J. COSTANZO; GEORGE W.) (Excluding
 COUCH, III; BURKE M. CRITCH-) Exhibit E)
 FIELD; THOMAS R. DAVIS; DIXON) Endorsed
 Q. DERN; RUTH CHURCH GUPTA;) Oct 25 1982
 DALE E. HANST; LEONARD HERR;)
 ROBERT A. HINE; PHYLLIS M. HIX;)
 MARTA MACIAS; PHILLIP)
 SCHAFER; CRAIG A. SILBERMAN;)
 DANIEL J. TOBIN; JAMES D.)
 WARD; and JOON HEE RHO,)
 Respondents and Defendants.)

INTRODUCTION

1. The California Constitution requires all persons licensed to practice law in this state to be members of the State Bar of California (State Bar). Cal. Const. art. VI, § 9. California law further requires all members of the State Bar to pay dues to the Bar on pain of suspension from the practice of law. Bus. & Prof. Code §§ 6140, 6143. In this action, petitioners and plaintiffs, members in good standing of the State Bar, seek to restrain respondents and defendants, the State Bar of California and its Board of Governors, from expending these mandatory assessments for political and ideological purposes in violation of petitioners and plaintiffs' constitutional rights to freedom of speech and association.

PARTIES

2. Petitioners, Eddie Keller, Raymond Brosterhous, Dan M. Kinter, and David Lampe are members in good standing of the State Bar of California and as such each is required to pay, has paid, and will continue to pay dues to the State Bar as required by law.

3. Respondent, State Bar of California, is a public corporation with its offices at 555 Franklin Street, San Francisco, California.

4. Respondents, Anthony M. Murray, Patricia Greene, Girt K. Hirschberg, Leland R. Selna, Jr., Geoffrey Van Louks, Thomas W. Eres, John J. Costanzo, George W. Couch, III, Burke M. Critchfield, Thomas R. Davis, Dixon Q. Dern, Ruth Church Gupta, Dale E. Hanst, Leonard

Herr, Robert A. Hine, Phyllis M. Hix, Marta Macias, Phillip Schafer, Craig A. Silberman, Daniel J. Tobin, James D. Ward, and Joon Hee Rho, are members of the Board of Governors of the State Bar. The Board of Governors is the governing body of the State Bar and has the ultimate authority over expenditures of revenues derived from mandatory dues. Board member, Thomas W. Eres, is a resident of Sacramento County.

CLAIM

5. Article 6, section 9 of the California Constitution requires all persons licensed to practice law in California to be members of the State Bar of California. Business and Professions Code § 6140 further requires all persons licensed to practice law in this state to pay membership dues annually to the State Bar. Basic membership dues for active members who have been licensed for less than three years is \$95. All other active members are charged a basic dues of \$165. Failure to pay this dues results in suspension from the practice of law. Bus. & Prof. Code § 6143.

6. The State Bar of California, by and through the Board of Governors, has expended and will continue to expend substantial portions of the revenues derived from these mandatory dues payments to advance political and ideological causes, including, but not limited to:

a. lobbying the California State Legislature on various matters (a partial list of bills lobbied by the State Bar in 1982 is attached hereto as Exhibit A and incorporated herein by reference);

b. submitting briefs amicus curiae in various cases thereby taking positions in direct opposition to some of its dues paying members (a partial list of cases in which the State Bar has appeared as amicus curiae is attached hereto as Exhibit B and incorporated herein by reference);

c. financing meetings of the Conference of Delegates at which political and ideological causes are advanced (a partial list of the resolutions adopted at the most recent meeting of the Conference of Delegates is attached hereto as Exhibit C and incorporated herein by reference);

d. publicizing the political and ideological speeches of its President, Anthony M. Murray (copies of State Bar news releases publicizing some of those speeches are attached hereto as Exhibit D and incorporated herein by reference); and

e. financing a so-called "public information" project designed to disseminate to the general public a particular ideology regarding judicial retention elections (a copy of materials disseminated by the State Bar pursuant to this project is attached hereto as Exhibit E and incorporated herein by reference).

7. Petitioners and plaintiffs do not subscribe to many of the political and ideological causes as set forth above and object to the use of their mandatory dues to advance any of the political and ideological beliefs of the Board of Governors and the Conference of Delegates.

8. To require petitioners and plaintiffs to give financial support to any political and ideological causes, especially those which they find morally objectionable and repugnant to their privately held beliefs, violates petitioners and plaintiffs' First and Fourteenth Amendment rights to freedom of speech and association and their rights under 42 U.S.C. § 1983. *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977); *Arrow v. Dow*, ___ F. Supp. ___, No. 78-434-M Civil (D.N.M., July 16, 1982).

9. Petitioners and plaintiffs are irreparably harmed by this deprivation of their constitutional liberties and have no adequate remedy at law.

10. Petitioners and plaintiffs have no other remedies, other than this action, that would protect their constitutionally guaranteed freedoms of speech and association. The amount of the mandatory dues is set by statute and respondents and defendants are given no discretion to lower the amount of the dues or to rebate a portion of the dues to those members who, like petitioners and plaintiffs, object to the use of their mandatory dues for political and ideological purposes.

WHEREFORE, petitioners and plaintiffs pray as follows:

1. a declaration issue that respondents and defendants have violated petitioners and plaintiffs' constitutional rights through the expenditure of revenues derived from mandatory bar dues and the use of the name of the State Bar of California for political and ideological purposes;

2. an injunction issue restraining respondents and defendants from using mandatory bar dues or the name of the State Bar of California to advance political and ideological causes or beliefs;

3. an injunction issue compelling respondent and defendant members of the Board of Governors to reimburse the Treasury of the State Bar of California for all State Bar funds they have authorized to be expended since September 12, 1982, and which in fact have been expended for political and ideological purposes;

4. or, in the alternative, an alternative writ of mandate issue under the seal of this Court compelling respondents and defendants immediately to cease and desist from the use of mandatory dues and the name of the State Bar of California to advance political and ideological causes and compelling respondent and defendant, members of the Board of Governors, to reimburse the Treasury of the State Bar of California for all State Bar funds they have authorized to be expended since September 12, 1982, and which have actually been expended for political and ideological purposes or to appear before this Court at a time then or thereafter specified to show cause why a peremptory writ of mandate should not issue;

5. on return of the alternative writ and hearing on the order to show cause, a peremptory writ of mandate issue compelling respondents and defendants immediately to cease and desist from the use of mandatory dues and the name of the State Bar of California to advance political and ideological causes and further compelling respondent and defendant, members of the Board of Governors, to reimburse the Treasury of the State Bar

of California for all State Bar funds they have authorized to be expended since September 12, 1982, and which have actually been expended for political and ideological purposes;

6. petitioners and plaintiffs be awarded their costs of suit herein, including reasonable attorneys' fees; and

7. the Court grant such other relief as may be just and proper.

DATED: October 25, 1982.

Respectfully submitted,

RONALD A. ZUMBRUN

JOHN H. FINDLEY

ANTHONY T. CASO

By /s/ Anthony T. Caso

ANTHONY T. CASO

Attorneys for Petitioners
and Plaintiffs

VERIFICATION

I, Eddie Keller, declare that:

I am one of the petitioners and plaintiffs in this action. Except as to the matters stated on information and belief, the facts contained in the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief are within my own knowledge, and these facts are true of my own knowledge and, with regard to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of October, 1982, at Sacramento, California.

/s/ Eddie Keller
EDDIE KELLER

EXHIBIT A

PARTIAL LIST OF LEGISLATION THAT THE STATE BAR HAS LOBBIED EITHER FOR OR AGAINST BEFORE THE STATE LEGISLATURE

AB 129 - permits consideration of comparable worth in setting salaries for female-dominated positions in state employment.

AB 1166 - revises responsibilities of local agency human relations commissions.

AB 1706 - establishes a preference for joint custody of children by both parents after divorce.

AB 1787 - establishes when a manufacturer must replace an automobile that fails to conform to warranties.

AB 2383 - prohibits most state and local agency employers from requiring employees to take polygraph tests.

AB 2384 - permits the adoption of regulations requiring consideration of a child's race, ethnicity, and religion when placing that child for adoption or foster care.

AB 2392 - prohibits possession of armor piercing handgun ammunition.

AB 2436 - transfers the responsibility for air pollution regulation to the Resources Agency and creates an

unlimited right of action to sue anybody causing air pollution.

AB 2443 - makes various changes regarding the establishment and computation of "lifeline" public utility rates.

AB 2501 - creates criminal sanctions for violation of laws pertaining to the display for sale of drug paraphernalia to minors.

AB 2540 - deletes requirement that peace officers must be citizens of the United States.

AB 2800 - makes various changes in laws prohibiting employment discrimination on the basis of pregnancy.

AB 2964 - creates criminal sanctions for an employer's interference with an employee's communications to public officials.

AB 2965 - prohibits employers from requiring applicants to provide information on misdemeanor convictions more than seven years old.

AB 3026 - establishes a demonstration project to provide employment assistance and training to Aid to Families with Dependent Children recipients.

AB 3049 - limits the rights to individualized education programs for students in need of special education.

AB 3147 - provides for licensure and regulation of labor management consultants.

AB 3302 - makes various changes in laws regulating the adoption, amendment, and implementation of solid waste management plans.

AB 3427 - creates an unlimited exclusion from gift tax for gifts to pay for education tuition or medical care.

AB 3693 - requires court to consider the fixing of child support as a fixed percentage of income with an automatic annual percentage increase.

ACA 15 - authorizes the use of inmate labor by private firms.

ACA 59 - prohibits sex discrimination by the state.

ACA 69 - requires individuals receiving public social services funds from the state to be engaged in employment for the benefit of the people of the state.

ACA 76 - provides that laws providing for the punishment of life imprisonment without parole shall apply to minors tried as adults and convicted of murder with a special circumstance.

AJR 63 - requests the Congress to enact laws not preempting state community property laws regarding federal pensions and other benefits.

SB 1574 - authorizes construction of prisons and makes various changes in the law regarding inmate labor.

SB 2037 - permits local governments to impose conditions on the operation of residential care facilities.

SCA 1 - deletes the requirement that local governments secure approval of the voters prior to constructing low rent housing projects.

SJR 29 - requests Congress to refrain from enacting a guest worker program or from permitting the importation of workers from other countries.

EXHIBIT B

PARTIAL LIST OF CASES IN WHICH THE STATE BAR HAS SUBMITTED BRIEFS AMICUS CURIAE

Brosnahan v. Brown, 32 Cal. 3d 236 (1982) (constitutionality of Proposition 8 - the Victims' Bill of Rights).

Hustedt v. Workers' Compensation Appeals Board, 30 Cal. 3d 329 (1981) (power of board to discipline attorneys practicing before it).

Hays v. Wood, 25 Cal. 3d 772 (1979) (requirement that attorney-public officials disclose names of clients).

Merco Construction Engineers, Inc. v. Municipal Court, 21 Cal. 3d 724 (1978) (nonattorneys appearing in court on behalf of a corporation).

Court of Appeal v. Superior Court, 21 Cal. 3d 121 (1978) (superseded statutes, jurisdiction).

Comden v. Superior Court, 20 Cal. 3d 906 (1978) (disqualification of law firm).

EXHIBIT C

PARTIAL LIST OF RESOLUTIONS ADOPTED BY THE CONFERENCE OF DELEGATES

Late filed Resolution No. 1 - endorsement for Proposition 15, the gun control initiative.

Late filed Resolution No. 2 - amendment of Civil Code regarding disqualification of appellate justices.

Late filed Resolution No. 3 - disapproval of the statements of senatorial candidate Pete Wilson regarding court review of the Victims' Bill of Rights.

Resolution No. 2-2-82 - endorsement of the nuclear weapons freeze initiative.

Resolution No. 2-4-82 - adoption of an Equal Rights Amendment for the California Constitution.

Resolution No. 2-5-82 - opposition to federal legislation limiting federal court jurisdiction over abortions, public school prayer, and busing.

Resolution No. 7-3-82 - supported principle of equal pay for comparable work.

Resolution No. 7-5-82 - provision of workers' compensation benefits for work time lost due to jury duty.

EXHIBIT D

NEWSRELEASE

SEAL

THE STATE BAR OF CALIFORNIA
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STATE BAR PRESIDENT CALLS ATTACKS ON
JUDGES POLITICALLY MOTIVATED

SAN FRANCISCO, October 8 - State Bar of California President Anthony Murray today issued the following response to the formation of "Californians for Judicial Reform," a committee led by various Republican party leaders and organized to campaign for the defeat of three new justices of the state Supreme Court whose names will appear on the November 2 state ballot for voter approval of their 12-year appointive terms in office.

False and misleading statements made by a newly-formed committee of political partisans campaigning to defeat three California Supreme Court justices in the November election must be corrected.

The committee, which calls itself "Californians for Judicial Reform," claims it is not trying to politicize the judiciary. This claim cannot be accepted. Committee members are Republican party officials and candidates for office. Its leaders are the Republican Candidates for Attorney General, Lieutenant Governor and the Assembly, and a chairperson of the Santa Barbara County Republican Central Committee.

The names of the three justices will appear on the ballot in an uncontested election that, according to

law, must be nonpartisan. The Republicans' attack on the justices is a thinly-disguised and deplorable attempt to drag the Supreme Court into partisan politics and to accomplish political goals at the expense of our system of justice. The politicians want to remove the justices so they can appoint their own supporters if their candidate for Governor is elected.

The new Committee's claim that judges appointed by Governor Brown are "activists" and "pro-defendant" is as irresponsible as it is inaccurate. In 1981, 86.3 per cent of the persons charged with felonies in California were convicted. California imprisons a higher percentage of its criminal offenders than any other state or any other nation with available statistics, with the exceptions of South Africa and the Soviet Union. In 1977, 10,400 persons were committed to prison in California; in 1982, 19,000 persons already have been sent to prison. *Per capita* prison commitments have increased approximately 80 per cent in five years, and California's prisons are now so overcrowded that their population has reached 125 per cent of capacity.

The Committee's leaders accused the California Supreme Court of "flip-flopping" on certain cases on which the court's decision was changed after rehearing. But the Committee did not reveal the fact that *none of the three justices whom the Committee is trying to unseat was on the Court or even had been appointed when those decisions were made.* Nevertheless, the politicians used those cases against the justices who had nothing to do with deciding them.

These unfair political tactics must be exposed. Nothing could be more destructive to our democratic system, which depends on a judiciary that is independent of partisan politics and that has the courage to decide cases on the facts and the law, not to please the politicians.

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NEW STATE BAR LEADER VOWS TO DEFEND JUDICIAL INDEPENDENCE

SACRAMENTO, September 12 - Attorney Anthony Murray of Los Angeles today used the occasion of his swearing in as president of The State Bar of California to announce a statewide program to educate the public about the role of the judiciary and to defend California judges against political attack. In his remarks, which were interrupted by applause nine times, Murray criticized what he called "the idiotic cries of self-appointed vigilantes" who threaten to campaign against the election, retention or confirmation of judges for political reasons.

Declaring that the defense of the judiciary would be the highest priority of his term in office, Murray called upon the representatives of local bar associations assembled for the state bar's Annual Meeting and Conference of Delegates to join in a statewide project that will include public speeches and resolutions by local and state bar leaders. Murray said that the state bar will provide advice and sample materials to "maximize the effectiveness of the campaign."

"We must make it clear that the only legitimate basis for refusing to retain or for recalling a justice is a showing

of incapacity or misconduct in office," Murray said, explaining that the courts' role of reviewing the constitutionality of enactments of the legislature or the voters is, by definition, "antimajoritarian." "They are required to overturn the popular will if it conflicts with a higher law," the newly-installed head of the official organization of California's 75,000 attorneys said of the courts. "That is their absolute responsibility."

He said it was likely that attacks on the judiciary would be stepped up "in the weeks and months ahead" as the state Supreme Court may be called upon to consider challenges to the constitutionality of various provisions of Proposition 8, the so-called "Victims Bill of Rights" approved by the voters in June. Recently, the court upheld the measure as complying with the constitutional requirement that a ballot initiative embrace only one subject, but it left open the possibility of hearing future challenges to specific provisions of Proposition 8.

"Already, the political opportunists hail the court's Proposition 8 decision as a political victory, claiming that the decision represents a surrender to political pressure," said Murray. "We can be assured that they will now increase the pressure to try to keep the court in line as it meets the challenges ahead. Nothing could be more destructive to our legal system."

At a press conference following his speech, Murray said that other priorities of his one-year term as state bar president include improving conditions in California's prisons, raising the level of competence of the state's attorneys by instituting state bar certification of trial specialists and a Litigation Section of the state bar, and

increasing access to legal services for low-income Californians.

Predicting "a hemorrhage of violence comparable to Attica and New Mexico" in California's prisons, Murray, who recently participated in an inspection of several prisons by the Executive Committee of the state bar's Criminal Law Section, said, "Everything about the prisons is bad."

Murray, 45, is a partner in the Los Angeles law firm of Ball, Hunt, Hart, Brown and Baerwitz. A member of the American Academy of Trial Lawyers, Murray has served on the Board of Governors of the Long Beach Bar Association and chaired the state bar's Criminal Law Section. He also has been a member of the state bar's Disciplinary Board and served on the state bar's Commission on Judicial Nominees Evaluation.

A native Californian, Murray received his J.D. from Loyola University School of Law in 1964 and became a member of the bar in 1965.

That principle was established early in the development of this nation. Just 29 years after the Declaration of Independence, the principle was put to a major test. Let's take a minute to remember our past as we prepare for the future. The year was 1805, the year the Senate of the United States conducted a celebrated impeachment trial. The named accused was Samuel Chase, Associate Justice of the United States Supreme Court. The real accused was judicial independence.

Justice Chase was a Federalist on a Federalist-dominated court, but the Republicans held the political

power and wanted to purge the court of Federalists. They started with Justice Chase. Does that sound somewhat familiar? Except for the names, that story could be our story, in 1982. The presiding officer was Aaron Burr, Vice President of the United States. Justice Chase was defended by Luther Martin, the greatest trial lawyer of the time. One of the witnesses was John Marshall, Chief Justice of the United States.

The dilemma for the Republican politicians was the one that always confronts ambitious politicians who attack the courts for personal gain. They had no legally sufficient reason to remove Justice Chase. The law was against them. They wanted to impeach him as a first step in removing all the other Federalist justices, including Marshall; but Chase had not committed any high crimes or misdemeanors which would justify impeachment under the Constitution.

The solution was the one that has been adopted throughout history: forget the legal reasons; attack the judge's *opinions* and *philosophy*. The politicians did that, and went even further. The chief architect of the impeachment campaign, Senator William Branch Giles, boldly announced that *judicial independence itself* was intolerable; that the courts were nothing more than an arm of the executive and legislative branches; and that the Senate had the authority to remove a judge if he is "disagreeable in his office, or wrongheaded."

Senator Giles shamelessly declared, in words that are disturbingly familiar today, that:

"A removal by impeachment was nothing more than a declaration by Congress to this effect: you hold

dangerous opinions, and if you are suffered to carry them into effect, you will work the destruction of the nation. *We want your offices*, for the purpose of giving them to men who will fill them better."

INDEPENDENCE OF THE JUDICIARY

A Speech by Anthony Murray
President of The State Bar of California
at his Swearing-in Ceremony
at the 1982 State Bar Annual Meeting
Sunday, September 12, 1982

This is a day of great pride for me. I am proud to succeed Sam Williams, who has truly been one of our greatest presidents. May I ask you to join me now in acknowledging his outstanding work for our profession.

I am proud to stand here as a part of this great bar association: the largest state bar in the nation; the largest self-regulating agency in the world; the recognized leader among the bar associations in this country.

I am especially proud because the organized bar throughout history has repeatedly shown that it stands for principle, and that it can and will defend the great traditions that drive our legal system.

That is the lesson of history, but history is often a poor teacher. The philosopher George Santayana told us that "Those who cannot remember the past are condemned to repeat it." Today, in California, we have been condemned to repeat a part of our past. It's a sad chapter for lawyers, one that is repeated over and over again.

I refer to the recent attacks upon our courts. We can expect those attacks to increase in the weeks and months ahead. The Supreme Court's recent decision rejecting a preliminary challenge to Proposition 8, the so-called "Victims' Bill of Rights," was only an opening skirmish. The real war will soon be fought, when the court receives the onslaught of challenges to the specific provisions of Proposition 8.

Already, the court's opponents hail the Proposition 8 decision as a *political* victory, claiming that the decision represents a surrender to political pressure. We can be assured that they will now increase the pressure to try to keep the court in line as it meets the challenges ahead.

Nothing could be more destructive to our legal system. The genius of that system, and the part that the ignorant and ambitious find easiest to attack, is judicial independence: the notion that the courts must operate outside and independently of politics.

It was the good fortune of the nation that the Senate did not yield to the appeals of the political opportunists. It rose above partisanship. It rejected the sophistry that a judge can be removed because the politicians disagree with his judicial philosophy. The Senate declined to impeach Justice Chase, refusing to abandon the principle of judicial independence.

That was 1805. What have we learned about judicial independence since then? Sad to say, down through the 177 years since the Chase trial, we have been condemned to repeat that story, over and over again. In our own time we have witnessed the scandalous attempts to impeach our greatest Chief Justice, Earl Warren. In California, we

saw the politicians assault the great Traynor Supreme Court. And now we again suffer the hysterical, "soft-on-crime" rantings of the assailants of our own Supreme Court.

We hear of a candidate for national office, himself a lawyer, who threatens a recall of our Chief Justice if the Supreme Court dares to overturn Proposition 8; and he says the Chief Justice should be recalled *regardless of the grounds* on which the court might invalidate Proposition 8. Shades of the Chase trial. "Forget the law." "You hold dangerous opinions." "You are wrong-headed." "We want you job so we can give it to someone whom we decide is right-headed."

We hear the idiotic cries of the self-appointed vigilantes: the committee on law and order; the court watchers; the self-seeking prosecutors and lawyers who want to be judges; and every unscrupulous politician who thinks there is something in it for him if he gets in line to kick the courts which he sees as inert and defenseless. But the surprise is that our courts are not defenseless. They have the bar. They have always had the bar. They have us as the defenders of the courts. And we are defending them. From San Diego, to Los Angeles, to San Francisco, to Sacramento, the bar is rising to denounce these attacks.

It is a curious truth that the strength of our legal system is also its weakness. The great paradox is that the more the courts exercise independence from politics, the more they expose themselves to attacks based on politics.

Why does our system seem almost to invite attacks upon the courts by unscrupulous politicians? The answer

lies in the nature of the duties the system asks our courts to perform. We say to the courts, "This is our Constitution. We charge you to tell us what it means." The courts must reduce to concrete terms such sublime but ethereal phrases in the California Constitution as, "All people are by nature free and independent." The Court must give specific content and application to declarations that everyone has inalienable rights to "life," "liberty," "safety," to "happiness," and to "privacy." And if the courts translate the right to "happiness" into specific legal rights and duties, there will always be someone around who will say that "'happiness' doesn't mean that", so the judges who gave it that meaning should be cashiered, defeated at the polls.

That's part of the squeeze on the courts. The other part is that the courts are called upon to exercise the power of judicial review, the responsibility of deciding whether an enactment of the legislature or of the voters is constitutional. To discharge that role, the courts by definition must be antimajoritarian. They are required to overturn the popular will if it conflicts with a higher law. That is their absolute responsibility. Overturning the popular will is not popular. But in giving them that responsibility, the system casts the courts in a nearly suicidal position. The courts occupy the unenviable role of policeman for the system. We mistrust absolute, unreviewable democracy, and so we ask the courts to police the works of democracy. And when they do so they are accused of "flouting the will of the people." And around and around we go.

The bullies of our land are out to beat up on the courts, and California is not the only place where they are throwing their weight around. It seems that across the nation, wherever there is an election, the judges are called "soft on crime." In a recent editorial, the New York Times cited the spectacle of the two Republican candidates for governor, each trying to go one better in attacking New York's highest court. Said the Times, "With equal fervor, they vowed to appoint only 'tough-minded' jurists when the tender-hearted incumbents retire." The editorial concluded by proposing the only effective antidote to such poison: "Bar associations and lawyers had better prepare to defend the bench against the bullies."

In California there are many opportunities to gang up on the courts. We have retention elections for Supreme Court justices. We have recall petitions. And the same crusaders who use and manipulate these procedures as swords have invented another weapon that is far more dangerous. They call it a "Victims' Bill of Rights." This bomb will soon roll into the Supreme Court, and once again the system will call upon the court to defuse the bomb before it blows us apart.

Proposition 8 is a simplistic, almost childish, but extremely dangerous measure. It pretends to deal with the deep complexities of crime by throwing slogans at the problem. It piously declares that there is a "right to safe schools" and does nothing to make schools safe. The ultimate irony is that it leaves to the courts, the same courts that its sponsors revile so much, the job of making the schools safe. It tampers with the right to privacy, the

right to bail, the insanity defense, diminished capacity, admissible evidence, and a host of other diverse subjects.

A hail of new challenges to the effects of Proposition 8 will soon rain down upon the court: denial of bail; use of illegally-obtained evidence; prohibition of plea-bargaining; the prejudicial effect of evidence no longer excluded. And the justices are expected to deal with these issues and all the while to remain unaffected by all of the jeering and threatening; they must not allow the pressure to affect their ability to perform the awesome quantities of work that flood the court in greater amounts each year.

Last year, the Supreme Court disposed of 3,179 petitions for hearing; that's 265 a month, nearly nine petitions every day of the year. In addition, the court decided 114 cases on the merits, and 27 death penalty cases came to the court by automatic appeal.

And most astonishing of all, the court performs these prodigious tasks without the slightest suggestion that it is yielding to the pressure. Now it is time for the bar to do its part. We need concrete action and we need it now.

We must make clear that the only legitimate basis for refusing to retain or for recalling a justice is a showing of incapacity or misconduct in office. We must point out that even the loudest of the Supreme Court's opponents do not suggest that there is the slightest evidence of incapacity or misconduct in office. We must make it clear that judges cannot be removed because the politicians disagree with their judicial philosophies or with specific opinions. Any other rule would replace judges with pollsters. Courts would never render a decision without first

raising a finger to the political wind. That was not our system when this nation was formed, and we won't allow it to become our system today.

In the next few days I will be proposing a specific plan of action:

- The plan will enlist the help of the local bars to speak out and to describe the need for an independent judiciary.

- It will provide specific materials to the local bars to help develop speeches, speakers' bureaus, media contacts, and other programs without delay.

I call upon you as leaders of our profession to join the long and honorable tradition of the bar and to rise in defense of our courts. I ask you to mobilize support in your communities, and to denounce these political mercenaries who are trying to pull down our legal system. The preservation of our independent judiciary can be your legacy for the future of the law. That's what the bar is all about. And that is why I am so deeply honored to be a part of it.

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Attorneys for Petitioners
and Plaintiffs

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

EDDIE KELLER, et al.,)	
Petitioners and Plaintiffs,	)	Civ. No. 307168
v.)	
STATE BAR OF CALIFORNIA, a	)	AMENDMENT
public corporation; ANTHONY M.	)	TO PETITION
MURRAY; PATRICIA GREENE;	)	FOR WRIT OF
GIRT K. HIRSCHBERG; LELAND R.	)	M A N D A T E
SELNA, JR.; GEOFFREY VAN	)	A N D C O M -
LOUKS; THOMAS W. ERES; JOHN	)	P L A I N T F O R
J. COSTANZO; GEORGE W.	)	D E C L A R A -
COUCH, III; BURKE M. CRITCH-	)	T O R Y A N D
FIELD; THOMAS R. DAVIS; DIXON	)	I N J U N C T I V E
Q. DERN; RUTH CHURCH GUPTA;	)	R E L I E F
DALE E. HANST; LEONARD HERR;)	
ROBERT A. HINE; PHYLLIS M. HIX;)	
MARTA MACIAS; PHILLIP)	
SCHAFER; CRAIG A. SILBERMAN;)	
DANIEL J. TOBIN; JAMES D.)	
WARD; and JOON HEE RHO,)	
Respondents and Defendants.)	

There being no answer or other responsive pleading of respondents and defendants yet on file in this action, petitioners and plaintiffs hereby amend their Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief as follows:

1. The caption on Page No. 1, Line Nos. 11-21, is amended to read:

EDDIE KELLER; RAYMOND)	
BROSTERHOUS; DAN M. KINTER;)	
DAVID LAMPE; GARRETT BEAU-)	Civ. No. 307168
MONT; CHRISTOPHER L. FAIR-)	
CHILD; JOHN A. GORDNIER;)	
CHRISTOPHER N. HEARD;)	
LEONARD C. HOAR, JR.; J.)	
ROBERT JIBSON; CHARLES P. JUST;)	
DAROLD D. PIEPER; THOMAS)	
HUNTER RUSSELL; NANCY L.)	
SWEET; MICHAEL J. WEIN-)	
BERGER; DAVID E. WHIT-)	
TINGTON; AND THOMAS R.)	
YANGER,)	
Petitioners and Plaintiffs,)	
v.)	

STATE BAR OF CALIFORNIA, a)	
public corporation; ANTHONY M.)	
MURRAY; PATRICIA GREENE;)	
GIRT K. HIRSCHBERG, LELAND R.)	
SELNA, JR.; GEOFFREY VAN)	
LOUKS; THOMAS W. ERES; JOHN)	
J. COSTANZO; GEORGE W.)	
COUCH, III; BURKE M. CRITCH-)	
FIELD; THOMAS R. DAVIS; DIXON)	
Q. DERN; RUTH CHURCH GUPTA;)	
DALE E. HANST; LEONARD HERR;)	
ROBERT A. HINE; PHYLLIS M. HIX;)	
MARTA MACIAS; PHILLIP)	
SCHAFER; CRAIG A. SILBERMAN;)	
DANIEL J. TOBIN; JAMES D.)	
WARD; AND JOON HEE RHO,)	
Respondents and Defendants.)	

2. Paragraph No. 2, on Page No. 2, Line Nos. 10-14, is amended to read:

"2. Petitioners and plaintiffs, Eddie Keller, Raymond Brosterhous, Dan M. Kinter, David Lampe, Garrett Beaumont, Christopher L. Fairchild, John A. Gordnier, Christopher N. Heard, Leonard C. Hoar, Jr., J. Robert Jibson, Charles P. Just, Darold D. Pieper, Thomas Hunter Russell, Nancy L. Sweet, Michael J. Weinberger, David E. Whittington, and Thomas R. Yanger are members in good standing of the State Bar of California and as such each is required to pay, has paid, and will continue to pay dues to the State Bar of California as required by law."

DATED: November 18, 1982.

Respectfully submitted,

RONALD A. ZUMBRUN
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IN AND FOR THE COUNTY OF SACRAMENTO

EDDIE KELLER, et al.,)	
Petitioners and Plaintiffs,)	Civ. No. 307168
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STATE BAR OF CALIFORNIA, a)	S E C O N D
public corporation; ANTHONY M.)	AMENDMENT
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FIELD; THOMAS R. DAVIS; DIXON)	T O R Y A N D
Q. DERN; RUTH CHURCH GUPTA;)	I N J U N C T I V E
DALE E. HANST; LEONARD HERR;)	R E L I E F
ROBERT A. HINE; PHYLLIS M. HIX;)	
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CHRISTOPHER N. HEARD;)	
LEONARD C. HOAR, JR.; J.)	
ROBERT JIBSON; CHARLES P. JUST;)	
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HUNTER RUSSELL; NANCY L.)	
SWEET; MICHAEL J. WEIN-)	
BERGER; DAVID E. WHIT-)	
TINGTON; THOMAS R. YANGER;)	
WARD A. CAMPBELL; DONALD C.)	
MEANEY; ASSEMBLYMAN)	
PATRICK J. NOLAN; and A. WELLS)	
PETERSEN,)	
Petitioners and Plaintiffs,)	
v.)	

STATE BAR OF CALIFORNIA, a)
public corporation; ANTHONY M.)
MURRAY; PATRICIA GREENE;)
GIRT K. HIRSCHBERG, LELAND R.)
SELNA, JR.; GEOFFREY VAN)
LOUKS; THOMAS W. ERES; JOHN)
J. COSTANZO; GEORGE W.)
COUCH, III; BURKE M. CRITCH-)
FIELD; THOMAS R. DAVIS; DIXON)
Q. DERN; RUTH CHURCH GUPTA;)
DALE E. HANST; LEONARD HERR;)
ROBERT A. HINE; PHYLLIS M. HIX;)
MARTA MACIAS; PHILLIP)
SCHAFER; CRAIG A. SILBERMAN;)
DANIEL J. TOBIN; JAMES D.)
WARD; AND JOON HEE RHO,)
Respondents and Defendants.)

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DATED: January 13, 1983.

Respectfully submitted,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

EDDIE KELLER, et al.,

Petitioners and Plaintiffs,

v.

STATE BAR OF CALIFORNIA, a public
corporation; ANTHONY M. MURRAY;
PATRICIA GREENE; GIRT K.
HIRSCHBERG, LELAND R. SELNA,
JR.; GEOFFREY VAN LOUKS;
THOMAS W. ERES; JOHN J. COS-
TANZO; GEORGE W. COUCH, III;
BURKE M. CRITCHFIELD; THOMAS
R. DAVIS; DIXON Q. DERN; RUTH
CHURCH GUPTA; DALE E. HANST;
LEONARD HERR; ROBERT A. HINE;
PHYLLIS M. HIX; MARTA MACIAS;
PHILLIP SCHAFER; CRAIG A. SIL-
BERMAN; DANIEL J. TOBIN; JAMES
D. WARD; AND JOON HEE RHO,

Respondents and Defendants.

) Civ. No. 307168

) ANSWER

) (Endorsed Jan.
21, 1983)

) J.A. Simpson,
Clerk by J. King-
sley, Deputy

Defendants State Bar of California, Anthony M. Murray, Patricia Greene, Girt K. Hirschberg, Leland R. Selna, Jr., Geoffrey Van Louks, Thomas W. Eres, John J. Costanzo, George W. Couch, III, Burke M. Critchfield, Thomas R. David, Dixon Q. Dern, Ruth Church Gupta, Dale E. Hanst, Leonard Herr, Robert A. Hine, Marta Macias, Phillip Schafer, Craig A. Silberman, Daniel J. Tobin, James D. Ward, and Joon Hee Rho, for themselves and no other parties, answer the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, as amended, as follows:

1. Defendants admit the allegations of Paragraph 1 of the Complaint, except the defendants deny that any expenditures are being made for political and ideological purposes in violation of petitioners' and plaintiffs' constitutional rights to freedom of speech and association.

2. Defendants have no information or belief sufficient to enable them to admit or deny the allegations of Paragraph 2 of the Complaint and on that basis deny, generally and specifically, each and every allegation thereof.

3. Defendants admit the allegations of Paragraph 3 of the Complaint.

4. Defendants admit the allegations of Paragraph 4 of the Complaint.

5. In response to the allegations of Paragraph 5 of the Complaint, defendants allege that the provisions of the California Constitution, and the Business and Professions Code, speak for themselves, and that basic membership dues for the State Bar are as set by the legislature. Except as so alleged, defendants deny, generally and

specifically, each and every allegation of Paragraph 5 of the Complaint.

6. Defendants admit that the State Bar of California has expended revenues for lobbying, the submission of briefs *amicus curiae*, financing meetings for the Conference of Delegates, publicizing the speeches of the President of the State Bar, and financing a public information project on the judiciary. Except as so admitted, defendants deny, generally and specifically, each and every allegation of Paragraph 6 of the Complaint.

7. Defendants have no information or belief sufficient to enable them to respond to the allegations of Paragraph 7 of the Complaint, and on that basis deny, generally and specifically, each and every allegation of Paragraph 7.

8. Defendants deny generally and specifically each and every allegation of Paragraph 8 of the Complaint.

9. Defendants deny generally and specifically each and every allegation of Paragraph 9 of the Complaint.

10. Defendants deny generally and specifically each and every allegation of Paragraph 10 of the Complaint. Defendants further deny, generally and specifically, that petitioners and plaintiffs are entitled to the remedies sought herein, or to any remedy at all.

FIRST FURTHER AND SEPARATE DEFENSE

11. Plaintiffs have failed to state a cause of action upon which relief can be granted.

SECOND FURTHER AND SEPARATE DEFENSE

12. Plaintiffs are guilty of laches, and are thus not entitled to equitable relief.

THIRD FURTHER AND SEPARATE DEFENSE

13. Plaintiffs come before the Court with unclean hands and are not entitled to any equitable relief.

FOURTH FURTHER AND SEPARATE DEFENSE

14. Plaintiffs have waived and are estopped from claiming any rights to equitable relief.

FIFTH FURTHER AND SEPARATE DEFENSE

15. Defendants' actions are privileged and protected by the laws and constitutions of the State of California and the United States.

WHEREFORE, these answering defendants pray that:

1. The relief sought by the Petition and Complaint be denied;
2. Defendants be permitted to recover from plaintiffs their costs of this suit, including their reasonable attorneys' fees, and
3. The Court grant defendants such other and further relief as it deems just and proper.

DATED: January 20, 1983.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO

EDDIE KELLER, et al.,) Civ. NO. 307168
Petitioners and Plaintiffs,)
v.	) MEMORAN-
STATE BAR OF CALIFORNIA, a public	) D U M O F
corporation; ANTHONY M. MURRAY;	) POINTS AND
PATRICIA GREENE; GIRT K.	) AUTHORITIES
HIRSCHBERG, LELAND R. SELNA,	) IN OPPOSITION
JR.; GEOFFREY VAN LOUKS;	) TO MOTION
THOMAS W. ERES; JOHN J. COS-	) FOR PRELIMI-
TANZO; GEORGE W. COUCH, III;	) NARY INJUNC-
BURKE M. CRITCHFIELD; THOMAS	) TION
R. DAVIS; DIXON Q. DERN; RUTH	) (Endorsed Jan.
CHURCH GUPTA; DALE E. HANST;	) 21, 1983)
LEONARD HERR; ROBERT A. HINE;	) J.A. Simpson,
PHYLLIS M. HIX; MARTA MACIAS;	) Clerk by B.J.
PHILLIP SCHAFER; CRAIG A. SIL-	) Straass, Deputy
BERMAN; DANIEL J. TOBIN; JAMES	) DATE:
D. WARD; AND JOON HEE RHO,	) January 28, 1983
Respondents and Defendants.	) TIME: 9:00 A.M.
	) DEPT.: 16

I. INTRODUCTION

This Memorandum of Points and Authorities is submitted on behalf of defendants State Bar of California, Anthony M. Murray, Patricia Greene, Girt K. Hirschberg, Leland R. Selna, Jr., Geoffrey Van Louks, Thomas W. Eres, John J. Costanzo, George W. Couch, III, Burke M. Critchfield, Thomas R. Davis, Dixon Q. Dern, Ruth Church Gupta, Dale E. Hanst, Leonard Herr, Robert A. Hine, Marta Macias, Phillip Schafer, Craig A. Silberman, Daniel J. Tobin, James D. Ward and Joon Hee Rho. Defendants respectfully submit that this is an inappropriate case for preliminary injunction, that plaintiffs have failed to make a sufficient showing to support a preliminary injunction, and that under the circumstances of this case such relief is unavailable in any event.

A. Preliminary Statement

The State Bar of California has existed since 1927. It is a creature of the State Constitution as implemented by legislative enactments. California statutes expressly authorize the State Bar to engage in the following range of activities: advancement of the science of jurisprudence; improvement of administration of justice; promotion of relations of the bar with the public; advancement of the professional interest of the members of the State Bar and performance of actions necessary to the administration and purposes of the State Bar.

The State Legislature closely supervises the scope of activity of the State Bar. The Legislature reviews the activities of the State Bar each year when authorizing annual "dues" payable by lawyers for the privilege of

practicing law in this State. The legislative consideration of annual State Bar "dues bills" does not occur in a vacuum, the State Bar presents the activities planned for the year to the Legislature.* In enacting the annual "dues bill", the Legislature implicitly authorizes the State Bar activity described in the presentation.

The most detailed presentation by the State Bar to the Legislature about its activity occurred in 1981. (Exhibit 1.) This presentation included over thirty individual activities in some ten categories, excluding administrative activities. Although less detailed, subsequent and prior presentations likewise described categories of activities. These categories (and some individual activities within them) include: enhancing professional standards and competency; supporting legal services delivery and access; educating the public; providing member services and improving the administration of justice, news media relations including capitalizing "on the news potential of the annual" meeting and "work with the President to take advantage of the news media's natural interest in what the bar has to say - through suggesting speech themes; preparing speech text in advance. . . . and publicizing his views through news releases, press conferences and editorial board meetings" (Exhibit 1, p. 131), public education programs (*id.*, *id.*, pp. 133, 159-164), legal

* Exhibits 1 and 2 to this Memorandum are examples of these presentations. All exhibits to this Memorandum are submitted under separate cover and filed concurrently with this Memorandum. Declarations in support of this Memorandum will be filed separately with the Court.

services and law reform including "presentation of legislative program (*id.*, 9, 148), and judicial system reform and evaluation of judicial nominees (Exhibit 2, p. 11 and 12).

In their motion plaintiffs seek a preliminary injunction that if granted would - without a trial on the merits - abort a major part of long performed functions of the State Bar expressly mandated and implicitly approved by the Legislature. Plaintiffs ask this honorable Court for this provisional relief even though: (1) to grant the relief sought would massively disrupt the *status quo* before a trial on the merits; (2) plaintiffs would suffer no irreparable injury if the preliminary injunction is denied; (3) the hardship to the State Bar were the preliminary injunction granted and its activities aborted would be great indeed, whereas plaintiffs would suffer little or none if the injunction is denied; and (4) the prospect that plaintiffs will prevail on the merits of the case is extremely unlikely.

Controlling California authority including *Stanson v. Mott*, 17 Cal.3d 206 (1976), *DeMille v. American Fed. of Radio Artists*, 31 Cal.2d 139 (1974) *cert. denied* 333 U.S. 876 (1948), and *Lehane v. City & County of San Francisco*, 30 Cal.App.3d 1051 (1972) supports the position of defendants, as does legislative history. In support of their request for injunctive relief plaintiffs rely upon one decision of one federal district court judge in New Mexico. In view of *Auto Equity Sales Inc. v. Superior Court*, 57 Cal.2d 450 (1962) this decision, *Arrow v. Dow*, 544 F.Supp. 458 (D.N.M. 1982) would not be binding upon this honorable court even if that case were indistinguishable from the case at bar and correctly decided. It is neither. Plaintiffs

have failed utterly to demonstrate that the integrated bar of New Mexico, a creature of court rule, is similar to the State Bar of California, which is created by the California Constitution and implemented by statutes, and is a governmental entity with broad authority. As described in *Arrow*, the integrated bar of New Mexico sought to justify the activity disallowed by the district court judge solely on a general right and obligation of lawyers. Finally, the reasoning of *Arrow* contradicts the reasoning of the Ninth Circuit in *Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, etc.*, 685 F.2d 1065 (9th Cir. 1982). The injunctive relief granted in *Arrow* is also contrary to the United States Supreme Court's decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1976), and the California Supreme Court's decision in *DeMille v. American Federation of Radio Artists*, 31 Cal.2d 139 (1947).

For these reasons, defendants respectfully submit that plaintiffs' Motion for Preliminary Injunction should be denied.

B. Status of This Action

This action has been filed by twenty-one individual members of the State Bar of California, who seek to enjoin a broad range of activities by the State Bar to which they apparently object. According to plaintiffs, the use of the fees they must pay as a result of the legislative authorization of the State Bar as an integrated bar, for activities they disapprove of, violates their First Amendment rights. Plaintiffs also seek preliminarily to enjoin the State Bar from proceeding with its activities outside of the area of admissions, discipline, and regulation, even though

they have failed to present any showing that these activities, or any activities, infringe their constitutional rights. Moreover, the authority upon which plaintiffs rely does not support the relief they request even if their factual showing were adequate.

A temporary restraining order and order to show cause was entered on October 26, 1982. Defendants were ordered to show cause why they should not be enjoined during the pendency of the action from using the revenue from State Bar dues, or the name of the State Bar, "to promote any particular ideologies regarding judicial retention elections or other elections." The Court further ordered that, pending the hearing, defendants were restrained from using revenue derived from the named plaintiffs' State Bar dues to "promote any particular criteria regarding the evaluation of judges and judicial retention elections."

This order, narrower than the order of preliminary injunction plaintiffs seek, has been superseded by an order continuing the hearing from November 29, 1982, to January 28, 1983. Pursuant to stipulation, pending the hearing the defendants have deposited a sum equal to the mandatory State Bar dues of all the plaintiffs named in the complaint as of December 2, 1982 in a trust account.* Thus, at the present time, no funds of the Plaintiffs are being used for any purpose at all.

* The complaint was amended again, on January 13, 1983, after the Court Order, to add additional plaintiffs.

C. *The History Of The State Bar And Its Activities*

The State Bar was created in 1927 by the State Bar Act. Bus. and Prof. Code §6000 *et seq.* Throughout its history, the State Bar has remained subject to the provisions of this statute. In 1960, the status of the State Bar was altered when the voters approved a ballot proposition making the State Bar a constitutional entity. A similar vote in 1966 maintained this status.

The creation of the State Bar in 1927 was in part prompted by concerns about inadequate professional standards and competence and by widespread recognition of the need for assistance in legal reform and improvement of judicial administration. Reference to the records of the State Bar shows that the State Bar immediately began activities to address these concerns and that many of the programs begun by the State Bar in its early years have lasted in one form or another over the fifty years in which the State Bar has been in existence. For example, even in the earliest years of the Bar, and throughout its history, there have been programs to improve delivery of legal services to the poor, to promote reform in procedural and substantive areas of law, and to educate the public about issues affecting the State Bar.

With regard to the issues raised in this lawsuit, State Bar records show that the types of activities challenged by plaintiffs here have been part of State Bar programs for many years. For example, from its inception, the Bar organized sections of members to study and propose legal reform. One of the areas addressed at that time was judicial selection and conduct. In the 1930's, the State Bar was instrumental in gaining adoption of standards for

judicial selection in California. More recently the Bar has assisted in programs of judicial evaluation. Thus, activities to maintain the independence and integrity of the judiciary are not new to the State Bar.

Similarly, legislative activity is not new to the State Bar. One of the most effective ways in which the State Bar can fulfill its obligations to advance the science of jurisprudence and to improve administration of justice is to suggest and promote legislation. In the early years of the Bar, members of sections studying potential legal reform were encouraged to lobby for reform. The members of the Board of Governors and Secretary of the State Bar also lobbied for adoption of legislation recommended by Bar sections.

Programs to encourage participation of State Bar members in State Bar activities and programs to obtain the input of State Bar Members in decisions made by that organization, have also been of long standing in the State Bar. In fact, the predecessor program to the Conference of Delegates began in the 1930's.

These are just a few examples of how the categories of work of the State Bar have since its beginnings remained relatively constant. These examples also underscore the fact that the activities challenged by petitioners are long standing practices of the State Bar. The Bar has historically and continues to play a significant role in providing the legislative and executive branches with

information and assistance in areas of the particular expertise.*

II. THIS IS NOT AN APPROPRIATE CASE FOR A PRELIMINARY INJUNCTION

A preliminary injunction is a remedy appropriate only in limited circumstances. Absent a strong showing by the plaintiff, it should be denied. It is a remedy within the discretion of the court, and because of the severity of the remedy, such discretion is to be exercised with caution. See 2 Witkin, *California Procedure*, Provisional Remedies § 78 (2d ed. 1970).

The Supreme Court has defined the factors to be considered by the trial court in exercising this discretion:

1. The decision is not an adjudication upon the merits, but a determination, based on a balance of the respective equities, that defendant should or should not be restrained;
2. The purpose is the preservation of the *status quo* until the final determination on the merits;
3. A balance is to be drawn based on relative hardship to the parties, and the reasonable probability of plaintiff's success on the merits and;

* A detailed discussion of the history of the State Bar and its activities is included in the Declaration of Magdalene Y. O'Rourke filed in support of this Memorandum. That Declaration and review of relevant history support the points made in this summary and demonstrates that plaintiffs are in fact challenging activities that have been the *status quo* for fifty years.

4. Any injunction issued may not be so uncertain or ambiguous that defendant cannot determine what actions are proscribed. *Continental Baking Co. v. Katz*, 68 Cal.2d 512, 528-29 (1968).

In applying these tests, this court should exercise its discretion to deny the preliminary injunctive relief plaintiffs seek. The *status quo* is precisely that which plaintiffs seek to upset by their request for preliminary injunction. Hardship to the State Bar and to the people of the State of California would be far greater than any hardship claimed by plaintiffs*; and plaintiffs' success on the merits is extremely improbable.

A. The Relief Requested Would Disrupt The Status Quo

The activities which plaintiffs seek preliminarily to enjoin are precisely those activities which the State Bar has engaged in since its inception in 1927. Plaintiffs obviously do not seek to preserve the *status quo*, for the status they seek to impose before this case is tried has never existed.** This is inappropriate. *KGB, Inc. v. Giannoulas*, 104 Cal.App.3d 844, 859 (1980).

In fact, what plaintiffs actually seek to obtain via a preliminary injunction is a massive change in the entire balance of activities carried on by the State Bar, without

* In fact, the hardship to plaintiffs would be *de minimus*. See Exhibit B to the Declaration of Mary G. Wailes filed in support hereof.

** See Declaration of Magdalene Y. O'Rourke.

making any detailed showing, and without giving this court an opportunity to consider the complex factual circumstances at issue here. Such an order would be wholly inconsistent with the caution mandated on a motion for preliminary injunction.

B. *The Balance Of Hardships Favors The State Bar*

In considering whether to grant preliminary relief, the court should balance the relative hardships between the parties:

"In the last analysis the trial court must determine which party is the more likely to be injured by the exercise of its discretion [citation] and it must then be exercised in favor of that party [citation]." *Continental Baking Co. v. Katz, supra*, 68 Cal.2d at 528, quoting *Family Record, Inc., v. Mitchell*, 172 Cal.App.2d 235, 242 (1959).

See also 2 Witkin, *California Procedure*, Provisional Remedies § 80 (2d ed. 1970).

1. *The Greater Burden Would Be Placed On The State Bar*

In applying this principle, courts have looked at the actual factual circumstances to determine where the greater burden will lie. Thus, in *State Board of Barber Examiners v. Star*, 8 Cal.App.3d 736 (1970), for example, a preliminary injunction was properly denied because the grant of that injunction would have resulted in great hardship to the defendant by forcing it to discontinue the practices in which it was engaged. Conversely, an injunction was upheld in *Associated California Loggers, Inc. v.*

Kinder, 79 Cal.App.3d 34 (1978), because the action enjoined would have resulted in termination of an "elaborate" program resulting in discharge of employees and economic loss, whereas the issuance of the injunction threatened no serious harm to the other party. 79 Cal.App.3d at 39. In this case, the hardship can be avoided by denying the requested injunction. As in *Star*, the grant of preliminary injunctive relief here would result in the complete cessation of a myriad of ongoing programs established by the State Bar. It would disrupt contracts and ongoing programs that could not be reconstituted easily if their continuity were broken.*

2. *The Public Interest Would Be Adversely Affected By The Grant Of Relief*

In performing the balancing test, the court must also consider whether the issuance of the injunction would adversely affect the public interest. See, e.g., *Socialist Workers' 1974 Calif. Campaign Committee v. Brown*, 53 Cal.App.3d 879 (1975).

"In balancing the injury to plaintiff's First Amendment rights which would result from denial of a preliminary injunction, as against the injury to the people of California which would result from the granting of the injunction, the trial court properly could have concluded (and doubtless did conclude) that the latter injury would be greater. '[W]here an injunction is

* See Declaration of Mary G. Wailes for a discussion of the hardships and disruption an injunction would cause to the State Bar.

asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until the final determination of the rights of the parties, though the postponement may be burdensome to plaintiff. . . . "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." " 53 Cal.App.3d at 889, quoting *Yakus v. United States*, 321 U.S. 414, 440-441 (1944).

The State Bar was created to, and does serve, the interest of the people of the State of California. The disruption, cessation, and destruction of its programs which would result from the grant of preliminary injunctive relief would thus be an overwhelming burden on the people of the State of California, which cannot be supported.

Although plaintiffs assert that they are, *per se*, irreparably injured by the damage to their First Amendment rights, such a possibility was explicitly considered, and rejected, in the *Brown* case. Although the State Bar submits that plaintiffs' rights are not injured, it submits also that, assuming some quantum of harm to plaintiffs, *Brown* requires that the rights of the State Bar and of the people of the State of California be given greater weight.

III. PLAINTIFFS ARE UNLIKELY TO PREVAIL ON THE MERITS

A. California Law Permits a Public Entity, Such as the State Bar, to Engage in the Type of Activities in Which the State Bar Engages

1. The State Bar is a Public Entity.

Article VI, §9, of the California Constitution establishes the State Bar of California as a public corporation.

The parallel legislative enactment, establishing the State Bar as a public corporation, and enumerating its powers, is the State Bar Act, Bus. & Prof. Code §6000 *et seq.* The California Supreme Court upheld the constitutionality of the State Bar Act, and the establishment of the State Bar as a public corporation, in *State Bar of California v. Superior Court*, 207 Cal. 323 (1929).

Public corporations constitute public entities. See *Service Employees Int'l Union Local No. 22 v. Roseville Community Hospital*, 24 Cal.App.3d 400, 407 (1972); *Bettencourt v. Industrial Acc. Co.*, 175 Cal. 559, 561 (1917). Like other public entities, the State Bar was created to serve governmental purposes and was accordingly vested with governmental powers. It is charged with the duty of regulating the profession and practice of law, a subject which "is essentially . . . a matter of public interest and concern. . . ." *State Bar of California v. Superior Court*, *supra*, 207 Cal. at 331.

Because the State Bar is a public entity, its property is exempt from taxation. As the Legislature has declared, such property is "held for essential public and governmental purposes in the judicial branch of the government. . . ." Bus. & Prof. Code §6008. The members of the Board of Governors are considered to be public officers acting under oath. *Chronicle Publishing Co. v. Superior Court*, 54 Cal.2d 548, 566 (1960). These governmental powers, purposes, and attributes demonstrate clearly that the State Bar is a public corporation in fact as well as in theory, and that it is dedicated to public, not private ends. See *State Bar of California v. Superior Court*, *supra* 207 Cal. at 330-32. Moreover, as a matter of general policy, public corporations are deemed to be public entities. See Govt.

Code §53050; Govt. Code § 811.2; Evid. Code § 200; *Rhyne v. Municipal Court*, 113 Cal.App.3d 807 (1980).

Thus, the State Bar, a creature of California constitutional and statutory law, is, as a matter of California law, a public entity. Specific standards have been developed in California defining the range of activities in which public agencies may properly engage. As demonstrated below, those standards clearly authorize the State Bar to engage in the full range of activities challenged in this lawsuit.

2. *Public Entity Authority Is Tested By The Implicit and Explicit Powers Granted To The Agency By The Constitution And Legislative Action*

The powers of public agencies in California were described at length in *Stanson v. Mott*, 17 Cal.3d 206 (1976). In that case, a taxpayer challenged the expenditure of funds by the State Department of Parks & Recreation to promote the passage of a ballot proposition. In confirming the authority of the Department to expend funds for lobbying and public information related to ballot propositions, the court first examined the scope of the authorization given to the agency to expend funds. This analysis was required by "the general principle" that expenditures by an administrative official are proper only "insofar as they are authorized, explicitly or implicitly, by legislative enactment." 17 Cal.3d at 213. In determining whether the challenged activity was proper, the court looked to the various legislative authorizations pertaining to the department.

Various opinions of the Attorney General of California have applied this same analysis permit state agencies

and public entities to expend public funds if the expenditure is within the scope of their legislative authorization. See, e.g., 58 Ops. Cal. Atty. Gen. 29 (1975); 51 Ops. Cal. Atty. Gen. 190 (1968); 42 Ops. Cal. Atty. Gen. 25 (1963); 35 Ops. Cal. Atty. Gen. 112 (1960).

Like other California governmental agencies, the limits of the State Bar must be established by reference to the authorization given to the State Bar by the legislature and the people of the State of California. In the case of the State Bar this authorization comes from both the constitutional enactment of its existence and the legislation directing it. Like any other public corporation, the State Bar:

"[D]erives its powers from the statute under which it is created and acts, and from such other statutes as may have been enacted by the legislature granting it additional powers or limiting those already granted." *Crawford v. Imperial Irrigation Dist.*, 200 Cal. 318, 326 (1927).

3. *The Legislative Authority Explicitly and Implicitly Authorizes the Full Scope of Current State Bar Activity*

a. *The Specific Authorization is Broad*

The legislative authorization for the California State Bar is both clear and broad. Among other things, the State Bar is empowered to "Do all . . . acts . . . necessary or expedient for the administration of its affairs or the attainment of its purposes." Bus. & Prof. Code §6001(g). The Board of Governors of the State Bar is likewise authorized to "make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses

for effectuating the purposes of this chapter." Bus. & Prof. Code §6028(a). Finally,

"The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public." Bus. & Prof. Code §6031.

Plaintiffs cannot show that any of the challenged activities of the State Bar are outside of the scope of its authorization. Plaintiffs rather attempt to enjoin State Bar activity by claiming that, because they may disagree with some or all of the positions of the State Bar, the State Bar may not use their funds to engage in such activities.*

b. *The Activities of the State Bar Have Been Specifically Approved By The Legislature And The Voters*

The State Bar has engaged in the activities plaintiffs challenge since its creation. The Legislature has scrutinized these activities annually in conjunction with its approval of the State Bar's dues bill. Thus, with full knowledge of these activities, the Legislature and the people of California have maintained the State Bar Act in effect. In determining whether the challenged activities are appropriate and are within the scope of the State

* Plaintiffs have not even described which particular positions of the State Bar they actually disagree with. Defendants are therefore unable to define for the Court what specific problems plaintiffs want to address.

Bar's proper functions as a state agency, this Court should give great weight to this consistent legislative support of the activities of the State Bar.

As shown in the Declaration of Magdalene Y. O'Rourke in support of this Memorandum, sets forth some of the reasons for the original enactment. The intent of the Legislature in enacting the State Bar Act is also of great import in determining the scope of the State Bar's powers.

"It is well settled that in construing statutes the Court must ascertain the intent of the Legislature so as to effectuate the purpose of the law. In the course of this procedure the Court must take into account a variety of factors, such as the context of the legislation, its objectives, the evils to be remedied, and public policy The cases are no less emphatic that contemporaneous constructions of the legislation may also be considered." *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.*, 59 Cal.App.3d 959, 973 (1976) (citations omitted).

See also *Alford v. Pierno*, 27 Cal.App.3d 682, 688 (1972).

Administrative construction of a statute and administrative practice are likewise entitled to great weight in ascertaining the meaning of the Legislature's actions. *English v. County of Alameda*, 70 Cal.App.3d 226, 240 (1977). Thus, the actions of the Legislature, both in reenacting the State Bar Act, and in approving the Bar's activities every year in the enacting the dues bill, are entitled to be weighed heavily in this Court's determination of the appropriate scope of the State Bar's authority. The State Bar's annual presentation in conjunction with its dues bill is explicit evidence of the Legislature's acute

awareness of its activities. Plaintiffs simply have no basis to argue that the challenged activities are beyond the scope of the intended authorization of the State Bar.

Further, in 1960 and in 1966 the electors of the State of California enacted constitutional propositions to establish and maintain the State Bar in the Constitution as a constitutional agency. In both elections the voters' approved the State Bar's status as a constitutional entity. The material submitted to the voters in these elections in support of, and in opposition to, the ballot propositions is contained in Exhibits 8 and 9 filed with this Memorandum. These materials are important in ascertaining the intent of the electorate (*see Diamond Int'l Corp. v. Boas*, 92 Cal. App.3d 1015, 1034 (1979).) They constitute powerful evidence that the concept of a State Bar, as a body with the powers approved by the legislature, was fully supported by California voters.

4. *The Plaintiffs Have Failed to Show That the Challenged Activities Are Outside the Scope of the State Bar's Authorization*

In their complaint, plaintiffs essentially object to activities in the following five areas:

- (a) lobbying;
- (b) submitting *amicus curiae* briefs;
- (c) financing meetings of the Conferences of Delegates;
- (d) publicizing speeches of the President of the State Bar; and
- (e) distributing public information on judicial retention retention. (Complaint, ¶ 6.)

Significantly, however, plaintiffs have identified no areas beyond the scope of the legislative and constitutional authorization of the State Bar. Plaintiffs have not met their burden as to any of these matters. In fact, all of the matters to which they object are within the scope of authorization for the State Bar.

(a) *Lobbying*

Plaintiffs have challenged the entire lobbying program of the State Bar, without attempting to show that any of this lobbying is outside the scope of the Bar's authority. Plaintiffs thus attack no specific aspect of the State Bar's program of legislative advocacy, but simply the right of the State Bar to engage in any lobbying activity at all.* Plaintiffs would apparently seek to require the Bar to justify each element in it. This burden, is plaintiffs', not defendants'. As plaintiffs identify no particular improper aspect of the program, the only issue is whether any lobbying activity is permitted. Lobbying by public agencies is clearly permitted under California law, so long as the lobbying is in areas within the authorized jurisdiction of the agency.

Having examined the scope of legislation governing that agency in *Stanson v. Mott*, *supra*, the court concluded that there had been no specific authorization for the use of public funds in the election campaigns at issue in that case. The court distinguished such expenditures from the use of funds for lobbying efforts, and noted specifically that lobbying efforts were authorized even though certain

* Exhibit A to the Declaration of Mary G. Wailes describes the State Bar's legislative programs for 1982.

of the causes advocated might be those which some members of the public might not support:

"[T]he legislative process contemplates that interested parties will attend legislative hearings to explain the potential benefits or detriments of proposed legislation, public agency lobbying, within the limits authorized by statute . . . in no way undermines or distorts the legislative process. By contrast, the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our Constitution leave to the 'free election' of the people . . . does present a serious threat to the integrity of the electoral process." 17 Cal.3d at 218. See also *Miller v. Miller*, 87 Cal.App.3d 762, 767 n.2 (1978).

The *Stanson* court made clear, however, that the prohibition against election campaigning did not preclude the agency from incurring any expense in connection with the election. The agency was implicitly authorized, the Court held, to expend funds to inform potential voters. 17 Cal.3d at 220. Indeed, the court stated that

"[I]t would be contrary to the public interest to bar knowledgeable public agencies from disclosing relevant information to the public, so long as such disclosure is full and impartial and does not amount to improper campaign activity." 17 Cal.3d at 221 n.6.

Thus, the court permitted a "fair presentation of facts" but prohibited, as had earlier courts, exhortations to the voters to vote in a certain manner. The standard for the determination of propriety was established as:

"a careful consideration of such factors as the style, tenor and timing of the publication; no

hard and fast rule governs every case." 17 Cal.3d at 222.

Thus, within the limits set by the legislative authorization of the agency, an agency may properly expend funds for purposes related to the agency's mandate so long as the power of the government is not brought to bear unfairly upon the electoral process. The power of agencies to lobby the Legislature, however, is specifically permitted. See *Crawford v. Imperial Irrigation Dist.*, 200 Cal. 318 (1927); *Lehane v. City & County of San Francisco*, 30 Cal.App.3d 1051 (1972).

"If a taxpayer can restrain a government entity from lobbying for legislation to which the taxpayer is opposed, the power of a government entity to lobby is a power which can never be exercised, for in practice some taxpayer will surely hold a contrary view. If the taxpayer does not agree with the decision of his elected representatives in this area, as in others, his recourse is to vote against them." 30 Cal.App.3d at 1056.

Plaintiffs obviously do not dispute that they can vote in State Bar elections, and participate in State Bar activities. Like all other members of the State Bar, they may attempt to affect policy through established mechanisms, but they may not impose their will upon the majority.

(b) *Amicus Curiae* Briefs

Plaintiffs' challenge to the State Bar's program of submitting *amicus curiae* briefs is unsupported by any showing that the program is outside of the Bar's specific authorization to advance the science of jurisprudence and to improve the administration of justice.* Again, plaintiffs

* Exhibit 6 is a copy of the procedures and guidelines for the *amicus* program.

attack no specific aspect of the State Bar's amicus brief program but rather its authority to file amicus briefs in general.

Plaintiffs' broad request for preliminary relief attempts to force upon the bar the burden to justify every brief filed as germane to the Bar's purposes. To obtain the preliminary relief they seek, however, plaintiffs must show that they are likely to prevail on the merits on this, as on all other issues. Certainly amicus briefs related to "the science of jurisprudence" and "the administration of justice" can be filed in keeping with the functions of the State Bar. Bus. and Prof. Code §6031.

The presentation of positions to a Court in a broad variety of cases parallels the legislative advocacy approved in *Stanson*; the rationale of that case is applicable. Plaintiffs' free speech or associational interests are in no way infringed by the Amicus program. Plaintiffs obviously do not contend that they cannot themselves file amicus briefs if they disagree with any position advocated by the State Bar; as with lobbying, their individual participation is in no way prohibited.

(c) *The Conference of Delegates*

The Conference of Delegates is an integral part of the democratic organization of the State Bar, providing a forum for the collegial discussion of caused by representatives of the lawyers of California.* Plaintiffs attack no specific aspect of activity of the Conference of Delegates,

* Exhibit 7 is a copy of the Conference of Delegates Handbook for 1982. This exhibit describes the Conference of Delegates program.

and they point to no facts showing that the function of the Conference is outside the scope of authorized activities under Bus. & Prof. Code §6031. Plaintiffs have also not demonstrated that they are unable to have their views heard and considered by the Conference. Their objection apparently is that at the Conference a majority view will prevail, and they therefore seek to enjoin the free speech of their fellow lawyers. The whole argument is bizarre. To preliminarily enjoin the Conference in the absence of any record at all would impose an impermissible prior restraint.

(d) *President's Speeches*

Again plaintiffs' attack is general and not specific. Plaintiffs seek to preliminarily enjoin *all* dissemination by the State Bar of the speeches of its president. The Bar is charged with undertaking activities concerning its relations with the public. Giving the public access to knowledge of the policies and activities of the Bar through the speeches of its President, along with other educational activities, is thus explicitly within the Bar's mandate and within the scope of activity permitted by *Stanson, supra*.

(e) *Public Information on Judicial Retention*

Materials describing the public information project on judicial retention are submitted to the Court as Exhibit 4. These documents demonstrate clearly that as to style, tenor, and timing, this ongoing project constitutes an effort by an informed agency to educate the public, fully, fairly, and impartially, as to matters within its expertise. Under *Stanson v. Mott* and the other relevant authority,

such a program is not only permissible, but it is appropriate and socially desirable. Indeed, in light of its legislative mandate, such a program may, in fact, be an obligation of the State Bar. Additionally, the fact that there is no impending judicial retention election reinforces the proposition that the activity of the State Bar is informational and not campaign related. While it is true that an information program designed to inform the public of the fundamental characteristics of the judicial function and of the historical foundation of an independent judiciary may be said to promote an ideology, this is an ideology intimately connected with the science of jurisprudence and the administration of justice. Once again, however, plaintiffs seek to enjoin an entire program, without having made any showing that they are affected by it or that particular aspects of it are in any way unauthorized. The prospect of plaintiffs' prevailing is at best improbable.

5. *The Cases On Which Plaintiffs Rely Do Not Affect The Controlling California Case Law*
 - (a) *Abood vs. Detroit Board of Education*

Plaintiffs claim that *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) governs this case. Except to the extent that it mandates rejection of plaintiffs' claim for injunctive relief, however, *Abood* is not on point.

Abood held, in pertinent part, that non-members of a labor union could not be constitutionally compelled to contribute to ideological causes they opposed. The Court held, however, that plaintiffs were not entitled to an injunction because of its effect upon the first amendment

rights of union members. 431 U.S. at 238. Instead, the Court limited plaintiffs to a rebate of a portion of the fees used for purposes other than those for which the union was formed. Except as it imposes such constitutionally mandated restrictions upon the injunctive remedy, *Abood* is otherwise inapplicable to the case at bar.

The difference in the nature of the payment in *Abood* and the tax paid as "dues" to the State Bar by California lawyers distinguishes the case at bar from that portion of *Abood* which provides for partial dues rebate. Plaintiffs in *Abood* were government employees who were not members of a union which had negotiated a collective bargaining agreement with the Board of Education. The agreement provided for an "agency shop," in which those employees who elected not to become members of the union were nevertheless obligated to pay the equivalent of union dues to it. This payment was designed to prevent unjust enrichment to the non-union employee who otherwise would receive the benefit of union representation for which the union members had paid. 431 U.S. at 222.

The result in *Abood*, that of permitting a check-off system by which a non-member could obtain a rebate of that portion of the payments which did not benefit him, is a direct result of an inherent limitation in the principle which allowed the payments to the union in the first instance. The allowance of an agency shop situation could only be justified by the special needs and benefits to be gained from that arrangement in a labor context. Thus, the First Amendment violation in *Abood* was the

direct product of the use of non-members' fees for purposes beyond the scope of the benefits that justified the agency shop.

The State Bar of California is hardly comparable to a labor union. The obligation of lawyers to pay to finance the functions of the State Bar is imposed by statute, not contract. State bar "dues" are in reality a special tax imposed upon those permitted to practice law in this State. Unlike in *Abood*, the State Bar's power to exact "dues" from all active California lawyers derives from the State's power to tax. The pertinent scope of authority to expend this tax is that applicable to public entities and not that applying to private organizations acting by agreement with government.

Furthermore, unlike the situation in *Abood*, there is no infringement upon the democratic process in the expenditures of the State Bar. Because they were not members of the union, the plaintiffs in *Abood* lacked any opportunity to have their voices heard in the policy determinations that led to the union's speech, legislative advocacy, and other activity. In contrast, the State Bar of California is a public entity incorporating an internal model of representative democracy operating within limitations imposed by a democratically elected State Legislature. (See Declaration of Mary G. Wailes.)

(b) *Arrow v. Dow*

Plaintiffs' reliance upon *Arrow v. Dow*, 544 F.Supp. 458 (D.N.M. 1982) is badly misplaced. In that case, a

federal district court in New Mexico held that the integrated bar of New Mexico could not engage in certain specified lobbying activities if those activities were financed with mandatory dues collected by the New Mexico Bar Association. A decision of the district court of New Mexico, however, is not binding on this honorable Court. To the extent that it is inconsistent with decisions of the California Supreme Court and Courts of Appeal, the case must simply be disregarded. The facts of *Arrow* are obviously different from the facts here, and the case was wrongly decided in any event.

Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450 (1962), holds that all trial courts of California must follow the decisional law of the California Supreme Court and Courts of Appeal. Thus, even if the reasoning of *Arrow* were persuasive (which, as we demonstrate below, it is not) *Auto Equity* precludes this court from adopting it as a principle of decision where there is California appellate authority to the contrary.

Furthermore, *Arrow* does not concern the State Bar of California, which is established by the state constitution and statute; *Arrow* concerns the integrated bar of New Mexico, a creature of a rule of court. Nothing in *Arrow* even suggests that the judicially authorized integrated bar association of New Mexico is charged with the broad scope of public duty imposed upon the California State Bar by the Constitution and statutes of this State. The *Arrow* court held that the New Mexico Bar Association could not assert as authority for its lobbying activity a general duty of lawyers to evaluate and give advice to the public on issues related to the administration of justice or improvement of the legal system. The California State

Bar, however, relies for its authority not upon some general duty, but upon the Constitution of this State and the powers expressly and implicitly granted by the legislature. The analysis of the New Mexico bar is accordingly irrelevant to California.

Moreover *Arrow* was simply decided incorrectly. Although it purports to follow *Abood*, *Arrow* ignores the Supreme Court's explicit proscription against injunctive relief which by restraining organization speech, would impinge upon the First Amendment rights of the majority in the organization.

Significantly, the Ninth Circuit has recently interpreted *Abood* in a manner contrary to the *Arrow* ruling. *Ellis v. Brotherhood of Railway, Airline & Steamship Clerks, etc., et al.*, 685 F.2d 1065 (9th Cir. 1982). In that case, the Court held that the concept of collective bargaining (to which even the *Abood* plaintiffs were required to contribute) should be interpreted broadly to include within its scope all nonpolitical ideological expenditures. The case, which involved a union shop agreement (thus, a mandatory membership situation) specifically rejected a narrow definition of the activities to which dissenting plaintiffs could be forced to contribute. The Court determined that the appropriate inquiry is whether "a particular challenged expenditure is germane to the union's work. . . ." 685 F.2d at 1072. Applying that test, the Court upheld a variety of expenditures for such things as convention, litigation, publications, social activities, death benefits, and organizing efforts.

This ruling directly contradicts the approach taken in *Arrow*, in which the district court limited the scope of

activities to those related to the purpose for which the bar was integrated and imposed injunctive relief of the kind expressly prohibited by *Abood*. Thus, even if the facts of *Arrow* were relevant, the decision would not express the law in the federal courts in this circuit.

B. *Even If Abood Were Held To Apply, The Requested Relief Is Not Available*

Even if *Abood* could somehow apply to this case, it constitutes no authority for the relief plaintiffs seek. If *Abood* applied here, no public entity in California could act in the future. Any citizen paying taxes to support any entity could obtain a rebate of his taxes any time such agency presented a position with which he disagreed. Such a result would be crippling:

"Majority rule necessarily prevails in all constitutional government including our federal, state, county and municipal bodies, else payment of a tax levied for a duly authorized and proper objective could be avoided by the mere assertion of beliefs and sentiments opposed to the accomplishment thereof. In a government based on democratic principles, the benefit as perceived by the majority prevails. And the individual citizen would raise but a faint cry of invasion of his constitutional rights should he seek to avoid his obligation because of a difference in personal views." *DeMille v. American Fed. of Radio Artists*, 31 Cal.2d 139, 150, (1947), cert. denied, 333 U.S. 876 (1948).

1. *The Decision in Abood Does Not Permit the Injunction Requested*

Although plaintiffs attempt to rely on *Abood*, they ignore two vital aspects of that case. First, *Abood's*

prohibition of compulsory contribution was limited to expenditures which were both not germane to the union's duties as a collective bargaining representative and which promoted political or ideological causes. Even as to those areas, however, the Court did

"[N]ot hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of the loss of governmental employment." 431 U.S. at 235-36.

Thus, denial of the broad injunctive relief sought was upheld. 431 U.S. at 241.

In response to this plain limitation on the relief they seek, plaintiffs assert only that it should not apply because the State Bar is a non-voluntary association and because all lawyers must not only pay fees but also be members.

This attempted distinction is not applicable under California law. In *DeMille v. American Federation of Radio Artists*, 31 Cal.2d 139 (1947), a union member in a union shop who objected to his union's position on a "right to work" ballot proposition, and who failed to pay a fee levied on the membership to support this effort, was suspended from his employment. The Court held that if the union had concluded, through its established process,

that this was an appropriate purpose of the organization, the Court should not intervene to say that the objective was outside of the purposes of the organization.

The Court likewise rejected plaintiff's contention that the fee requirement was unconstitutional because it represented compulsory expression. The contribution was not an individual expression of the views of the plaintiff, the Court held, nor was the use of the fund a use of his money to express his views:

"[T]he member and the association are distinct. The union represents the common or group interests of its members, as distinguished from their personal or private interest. 'Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity. This difference is as well defined as that existing between individual members of the union.' " 31 Cal.2d at 149 (citations omitted).

The Court also observed that, in an organization,

[M]ere disagreement with the majority does not absolve the dissenting minority from compliance with action of the association taken through authorized union methods. And compliance -- here payment by the plaintiff of the assessment -- would not stamp his act as a personal endorsement of the declared view of the majority.* *Id.* at 150.

* Indeed, the Court drew an analogy to a bar association, which uses its funds to support ideas which the majority consider worthy of support, but with which courts will not interfere merely because some members disagree with that position. 31 Cal.2d at 150.

Finally, the Court held that plaintiff's automatic suspension -- the "non-voluntary" aspect of the case -- did not alter its conclusion. The plaintiff had chosen not to pay the assessment, knowing the consequences of his act, and thus had voluntarily undertaken action the results of which he sought to avoid. 31 Cal.2d at 154-55.

There is no United States Supreme Court authority to the contrary. The only other pertinent United States Supreme Court authority of which defendants are aware is *Lathrop v. Donohue*, 367 U.S. 820 (1961). That decision is consistent with *DeMille* and defendants' position here.

In *Lathrop*, the Supreme Court upheld the constitutionality of the integrated bar of the State of Michigan. A plurality of the Court specifically held that the only compulsion involved was the compelled financial support represented by the payment of dues, not any other membership activity. The membership requirement was held to infringe no associational rights. 367 U.S. at 828, 842. In their concurring opinion Justices Harlan and Frankfurter reached the same conclusion. 367 U.S. at 850-51.

Members of the State Bar in California are compelled only to pay their membership fees. They are not compelled to attend meetings, or even to vote on issues on which they are entitled to vote as members of the State Bar. Plaintiffs do not contend otherwise. Thus, on the associational issue, *Lathrop* is the persuasive authority.*

* Although the Court in *Abood* noted that it did not believe that the majority in *Lathrop* had agreed on any proposition other than that the constitutional issue should be reached,

(Continued on following page)

2. *Abood Limits Relief to Activities Which Are Not Germane to the Purpose for Which the Organization Is Formed*

Plaintiffs have made no attempt to demonstrate that the challenged activities are not germane to the purposes for which the State Bar was formed, as those purposes are defined by the California Constitution and the relevant sections of the Business and Professions Code. Instead, plaintiffs simply rely on the *Arrow* case, which declares that any activity outside of the very narrow range of admissions, discipline, and regulation is not germane. This approach, however, fails utterly to meet the burden placed upon plaintiffs by both *Abood* itself and the interpretation of that ruling in *Ellis*. That the *Arrow* court elected not to address this issue does not excuse plaintiffs from this burden.

IV. CONCLUSION

Without even stating the precise nature of their objections, plaintiffs seek preliminarily to enjoin all activities of the State Bar outside of a narrowly defined area. Plaintiffs seek to force the State Bar to defend all of its activities at this preliminary stage, and thus request this Court to issue an injunction in the absence of hearing any evidence.

(Continued from previous page)

431 U.S. at 233, n.29, that statement must be read in the context of the narrow issues presented in *Abood*. The question that is not decided by the Court in *Lathrop* concern infringement of rights of speech. That question was determined in *DeMille*. Thus, if *Lathrop* is authoritative, it is consistent with *DeMille*, and if the *Abood* footnote is read broadly to limit the decision in *Lathrop*, that opinion is still not contrary to the controlling case in California.

After a trial on the merits, this Court can determine whether plaintiffs have met their burden of showing that the activities of the State Bar actually interfere with plaintiffs' exercise of their First Amendment rights because those activities are beyond the scope of the permissible activities of the State Bar. Until then, however, the absence of specificity makes the fashioning of appropriate relief an impossible task. This Court should not become a special master for the State Bar to determine on a case by case basis, and without benefit of trial on the merits, whether an activity by the State Bar is appropriate.

The preliminary injunction plaintiffs seek would greatly alter the *status quo*; the hardship upon the State Bar is great; plaintiffs' chances of prevailing on the merits are unlikely; and a preliminary injunction is an inappropriate remedy. Defendants respectfully submit plaintiffs' motion should be denied.

DATED: January __, 1983

Respectfully submitted

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EXHIBIT 2

SEAL
THE STATE BAR OF CALIFORNIA

April, 1982

MULTI-YEAR
FEE CEILING
BACKGROUND

AB 3739

STATE BAR OF CALIFORNIA
MULTI-YEAR FEE CEILING
BACKGROUND

Overview

The state Bar of California has proposed a multi-year fee ceiling bill to replace the current method of fixing State Bar members' fees on an annual basis. The fee ceiling would remain constant for four years, except for increases due to inflation and the cost of new state-mandated programs. The following information outlines the multi-year fee ceiling bill and tells why it is needed at this time.

What does the State Bar do?

The State Bar of California is a constitutionally mandated public corporation within the judicial branch of state government (Cal. Const., art. 6, § 9; Bus. & Prof. Code, §§ 6001, et seq.). It serves as the administrative arm of the Supreme Court in regulatory matters involving attorneys, including admissions, discipline and reinstatement; and it assists in the advancement of the administration of justice.

The State Bar is engaged in the following activities:

- Testing bar applicants and accrediting law schools
- Enforcing professional standards and enhancing competence
- Supporting legal services delivery and access
- Improving the administration of justice
- Providing member services
- Educating the public

A detailed description of these activities is contained in Enclosure A.

How is the State Bar funded?

The State Bar's 1982 revenue budget totals \$19,249,067 - no part of which is funded by the state. The State Bar's general fund accounts for \$14,549,486, or 75.6 per cent of this total. Of the portion generated by the general fund, 85.1 per cent in 1982 comes from annual membership fees paid by active bar members (all attorneys entitled to practice law in California) and from interest earned on the fees paid and penalties collected for late payments. The rest of the general fund (14.9 per cent in 1982) comes from state bar activities for which fees are charged; these include law corporation registration, State Bar magazine advertising sales and State Bar Annual Meeting registration fees.

The remaining 24.4 per cent is generated by State Bar activities that are entirely or mostly self-sustaining. Admissions revenue, budgeted at \$3,920,640 for 1982, is derived from test and other fees charged to bar examination applicants. The Department of Legal Specialization's

\$237,700 revenue budget is derived from certification and recertification fees. In addition, \$541,241 in fees support all direct costs for sections, though the general fund pays for staff support.

What is the money spent for?

The following is a breakdown of the 1982 projected costs of State Bar general fund programs:

(These costs include pro-ration of general institutional costs of operations that of necessity must be shared by all programs - including those for the Board of Governors, the General Counsel, administrative services, financial services, computer services and personnel services.)

<u>Activity</u>	<u>Projected costs</u>	<u>Percentage of total costs</u>
Enforcing professional standards and enhancing competence	\$ 8,402,749	58.70
Supporting legal services delivery and access	1,194,933	8.35
Improving the administration of justice	1,872,084	13.08
Providing member services	2,510,760	17.54
Educating the public	<u>334,528</u>	<u>2.33</u>
Total	\$14,315,054	100.00

This breakdown is illustrated in a pie chart as Enclosure B and detailed in Enclosure C.

Who sets State Bar membership fees?

The Legislature sets the ceiling on State Bar annual membership fees, and the State Bar's governing body fixes the fee within the authorized ceiling.

The State Bar's governing body is a 22-member Board of Governors. Fifteen are attorneys, elected in districts throughout the state by State Bar members. One represents the California Young Lawyers Association. Six are public members appointed by the Governor. Beginning in 1983, as public member terms expire, the Governor will be responsible for appointing four members to the board; the Senate Committee on Rules and the Speaker of the Assembly will appoint one each.

What does the State Bar's multi-year fee ceiling bill propose?

With the multi-year fee ceiling bill the Legislature would place a ceiling on annual fees for four years beginning January 1, 1983, and would permit the State Bar Board of Governors to set annual membership fees for each of those years within the maximum. This maximum would not exceed the 1982 membership fees except for:

- An inflation adjustment to preserve the value of 1982 dollars.
- An amount necessary to fund any new activity that is mandated by legislation. The State Bar Board of Governors would retain authority for the funding as long as the mandate is in effect.

In addition, the bill would permit the State Bar to continue to collect up to \$10 per year per member for the building fund.

What would likely be the impact of this bill on individual members' fees?

The 1982 basic membership fees, fixed at the maximum authorized by the Legislature, are \$95 (plus \$10 for the building fund) for active members admitted to practice for less than three years and \$165 (plus \$10 for the building fund) for members admitted for three years or more.

The 1981 basic membership fees were \$75 and \$130 respectively. What inflation will be is anybody's guess. But assuming an inflation rate of 8 per cent for the next four years, under the multi-year ceiling, the basic membership fees could be increased by no more than \$13 in 1983, \$14 in 1984, \$15 in 1985 and \$16 in 1986.

These projections and the actual basic membership fee increases for 1969 through 1982 are illustrated in a bar chart as Enclosure D.

Why is a multi-year fee ceiling proposed?

A multi-year fee ceiling would provide the most prudent method of assuring funding for State Bar responsibilities in the 1980s. Factors prompting the proposal at this time are a need to stabilize state bar expenses after a decade of rapid growth, a desire to assure program stability and effective management, and completion of a multi-year program planning process.

- *A decade of fiscal pressure.* Prior to the 1970s, the State Bar rarely needed to seek legislative approval of fee ceiling increases. In fact, from 1928 to 1949, the fee ceiling was not raised. However, in the 1970s, the Board of

Governors was required to go to the Legislature several times for fee ceiling increases, as fiscal pressures increased rapidly. Factors in this growth included:

- * *Inflation.* Between 1971 and 1981, the rate of inflation increased more than 140 per cent.

- * *Membership gains.* During the 10-year period of dramatic inflation increases, State Bar membership more than doubled - from 33,476 to 72,922. Bar membership became bottom-heavy, with a large percentage of members paying fees at the lowest end of the State Bar's multi-tier dues structure.

- * *Expanded State Bar responsibilities.* Within the last decade, the State Bar has been thrust into new and broader responsibilities by forces outside the bar, as well as within. The growing intricacies of the attorney discipline and fee arbitration systems have given the bar a more complex and increasingly adversarial role. The general public's continuing and rightful demands for accountability have intensified bar effort to keep the public informed about all aspects of the legal profession - from the fairness of the admissions process to the impartiality of the discipline system. The public's more-litigious stance in the last decade has multiplied the occasions on the which the State Bar is drawn into lawsuits. The State has mandated a number of bar responsibilities including the Commission on Judicial Nominees Evaluation, assistance to the California Law Revision Commission, certification and registration of law corporations and fee arbitration. The Legislature more and more frequently calls on the State Bar for its expertise and background. In an era of rapidly expanding legal fields and changing laws, attorney needs for information in specializes areas of the law are increasingly felt by

State Bar sections. Most recently, reductions in Legal Services Corporation funding have impelled the bar to move into a stronger leadership role in helping provide legal services to the poor.

- *Program stability and effective management.* A number of bar programs necessarily are effective only over the course of several years. In addition, sound management derives from forecasts, projections and planning beyond a 12-month period. Without the assurance of the continued funding that a multi-year fee ceiling would provide, long-range planning and effective management opportunities are impaired. Also, a multi-year fee ceiling would allow State Bar Board of Governors to transfer time and energy from the preparation of materials and presentation needed in support of a yearly State Bar fee bill to the management and implementation of State Bar programs and activities.

- *Program plan.* During the past two years, the Board of Governors conducted the most intensive program and fiscal reviews in State Bar history, as part of the process that produced the 1982 fee bill and, more recently, the 1982 budget and multi-year fee ceiling bill. This in-depth review of bar programs, was guided by the knowledge that the bar must have a plan to live within predictable fiscal limits. The State Bar's current program mix is a solid foundation for stable and effective programming over the course of several years. It can be supported by the existing level of annual fees, subject to cost-of-living increases only.

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The resulting re-allocation of bar resources from 1981 to 1982 is illustrated in the bar chart of Enclosure E.

What is the 1982 State Bar budget?

While this background paper has dealt with 1982 State Bar programmatic costs, the actual 1982 operating budget follows a somewhat different format. A copy of the 1982 operating budget, incorporating direct line-item comparisons with the 1981 actual expenses, appears as Enclosure F.

April, 1982

Enclosure A

STATE BAR OF CALIFORNIA
MULTI-YEAR FEE CEILING
BACKGROUND

THE STATE BAR ROLE IN PROFESSIONAL ACTIVITIES
TESTING BAR APPLICANTS AND ACCREDITING LAW
SCHOOLS

**Bar examination*

The state bar acts as an arm of the California Supreme Court in testing and screening applicants for licenses to practice law in this state. The Committee of Bar Examiners, the state bar body that – among other things – examines the qualifications of people who apply to practice law in California, administers the bar examination.

The bar examination consists of a Multistate Bar Examination – a multiple choice section prepared by the National Conference of Bar Examiners (NCBE) and used throughout the nation – and an essay section. Questions for the California essay test are developed during a year-long process. After use, they are included in a national "question catalog" set up in 1953 by the NCBE. At last

count, California test questions comprised a significant portion of the catalog and an even greater percentage of the questions ordered by other states.

California was the first state to introduce a Professional Responsibility Examination, a separate test on bar Rules of Professional Conduct. Today, passage of the Multistate Professional Responsibility Examination, prepared by the NCBE and based on the original California test, is a requirement for admission in California and 20 other states.

The number of law students taking the bar examination has increased dramatically during the last few years – from 6,606 in 1973 to more than 12,000 in 1981. The average pass rate during the 1970s was slightly more than 50 per cent.

Fees charged to applicants taking the examinations support the bar's admissions function.

**Law school accreditation*

California and Georgia are the only states with extensive programs for the accreditation of law schools that are not approved by the American Bar Association.

In California, the Committee of Bar Examiners has accredited all law schools that are ABA-approved, plus a number of additional schools in the state. For the most part, standards for accreditation and for ABA-approval deal with the same factors, including a school's faculty, educational program and scholastic standards. Most differences are a matter of degree.

Currently, approximately 15,000 students are enrolled in 16 ABA-approved law schools, about 4,500 in 16 state-accredited schools, and less than 1,000 in 16 unaccredited schools.

**Moral character certification*

Rules regulating admission to law practice in California require applicants to be of good moral character.

As part of the Committee of Bar Examiner's process of investigating moral character, bar examination application forms include a personal history questionnaire that attempts to determine whether law students have been convicted of violating a law or ordinance, involved in law suits or disciplinary actions and more.

If the committee believes an applicant's responses on the personal history questionnaire or a state bar investigation may disqualify him or her from practicing law in California, the State Bar Court may hold a hearing. If, after the hearing, the court believes the applicant does not meet moral character standards, then the committee can refuse to recommend the applicant to the California Supreme Court for admission to practice. In this case, the applicant may ask the supreme court to review the committee's finding before making a decision.

ENFORCING PROFESSIONAL STANDARDS AND ENHANCING COMPETENCE

**Certification for Practical Training of Law Students programs*

Practical Training of Law Students programs give qualified law students carefully supervised on-the-job

training in actual law office and courtroom situations. In 1981, the state bar certified approximately 1,700 students for participation in these programs.

**Developing new Rules of Professional Conduct*

New rules or changes in existing rules relating to professional ethics are formulated by the Committee on Professional Responsibility and Conduct - sometimes working with bar staff. Rule changes are suggested by lawyers, local bar associations, judges, the public, members of the Board of Governors and committee members themselves. The proposed rules move from the committee to the Board Committee on Lawyer Services to the Board of Governors which may reject or adopt the proposals. Before formal adoption, the board publishes a rule proposal or change for comment by members of the profession and the public. Upon adoption by the board, the rule is recommended to the state Supreme Court and becomes effective only after court approval.

Continued study and change in the Rules of Professional Conduct ensure that the rules protect the public, reflect the changing needs of society and the changing nature of legal practice, and articulate to lawyers and the public the standard of conduct required of those licensed to practice law in California.

Since 1979, the court has approved a number of state bar regulatory proposals including rules that require an attorney to notify a client of a written settlement offer, allow an attorney to continue to represent a client even if the attorney or a member of his firm might be called as a witness in the case, permit attorneys to pay each other

referral fees under certain circumstances and allow lawyers to advertise in any medium as long as the communication is not false or misleading.

**Ethics opinions*

The Committee on Professional Responsibility and Conduct issues advisory ethics opinions upon requests from members of the bar. The opinions clarify the meaning of general rules or standards as they apply to a specific situation, indicating whether – in the committee's opinion – a particular act is likely to subject a lawyer to discipline.

Ethics opinions are issued by the committee when no similar service is provided by a local bar association in the area from which the request comes or when a local bar association refers a request to the committee.

The committee's opinions are published in the *California Lawyer* and distributed to legal publications when the committee believes the opinion involves an issue of broad or novel interest. Others are issued by letter to the persons who requested the opinions.

Recently the committee published an opinion on the ethical responsibilities of attorneys employed by legal services programs whose funding may be terminated or substantially reduced.

**Ethics "hotline"*

Recently, the bar improved its method of helping lawyers deal with ethical problems, prevent misconduct and improve lawyer-client relations. The bar now staffs

an ethics "hotline" that answers questions from lawyers. Last year, the bar received more than 8,000 phone calls and letters. This unit answers urgent inquiries that cannot wait for the Committee on Professional Responsibility and Conduct to issue a written opinion.

**Unauthorized Practice of Law office*

This bar office serves as watchdog to protect both the legal profession and the public from individuals and companies that dispense legal advice without a license. The office receives more than 1,000 complaints each year.

A plan to expand the enforcement activities the state bar's Unauthorized Practice of Law Department has received the tentative approval of the Board of Governors and currently is being circulated for comment. It would change the way complaints are processed, dramatically enlarging the state bar's enforcement power. The plan recommends a state Supreme Court rule authorizing the board to appoint a Committee on Unauthorized Practice of Law – including lawyer and public members – that would investigate UPL complaints, conduct hearings, issue cease-and-desist orders and initiate contempt proceedings in superior court if the order is ignored.

**Disciplinary system*

The state bar's disciplinary and related functions are its largest single budget item.

The bar acts as an arm of the state Supreme Court in investigating complaints against lawyers and recommending discipline for those found guilty of professional misconduct.

The California system has served as a model for the nation. In 1970, a national commission reported a "scandalous situation" in legal discipline systems and recommended 36 changes. In almost every case, the California system reflected the solutions.

Recent improvements in the system include a reorganization unifying nine boards and committees with different sets of rules into one State Bar Court. It also further separated the system's prosecutorial and adjudicative functions, an advancement in due process.

The State Bar Court now has four departments. Investigation department referees determine whether complaints against lawyers justify formal hearings. Hearing department referees conduct formal hearings. A review department, with additional referees, reviews matters within the jurisdiction of the State Bar Court and makes final determinations in all Client Security Fund matters. In January 1982, the Board of Governors approved the creation of the probation department. The Supreme Court today imposes conditions of probation in more than 80 per cent of its orders of attorney suspension. Referees of the probation department, which now is being formed, will work to ensure compliance with the terms of an attorney's probation.

Both the public and the legal profession are represented among the hearing department's 318 referees and the review department's 15 referees. The investigation department's 204 referees are all lawyers. These referees support the bar's disciplinary process with an estimated 15,000 hours of volunteer time annually.

Complaints against lawyers rose from 4,187 in fiscal 1973-74 to 6,946 in 1981. Some 938 complaints warranted consideration by investigation referees. Seventy reprovals were issued by the State Bar Court last year, and suspensions and disbarments imposed by the Supreme Court totaled 92 in 1981. In addition, 113 admonitions or warnings - added to the program in 1976 - were issued last year.

**Client Security Fund proceedings*

A Client Security Fund, created in 1972, may pay clients up to \$25,000 for losses due to an attorney's dishonest conduct. As of July 31, 1981, the fund had paid more than \$1,270,000 in 302 cases. The fund is supported by special assessments paid by all California attorneys.

**Alcohol Abuse program*

The state bar Alcohol Abuse program, patterned after Alcoholics Anonymous, helps attorneys resolve drinking problems that affect their work. Since 1973, about 1,500 lawyers and judges have participated in the program, and almost two-thirds have successfully handled their drinking problems. The bar also operates a pilot program in its disciplinary process that refers lawyers to the Alcohol Abuse program for evaluation and possibly as a condition of probation.

**Mandatory fee arbitration*

Following enactment of a state bar-sponsored law that requires a lawyer to arbitrate a fee at a client's

request, the bar established minimum standards for local bar association arbitration panels dealing with fee disputes. Currently, there are 35 local panels throughout the state. The state bar provides the arbitration service in areas where no local bar lawyer/client fee arbitration program exists. During 1980, these programs handled more than 2,000 fee disputes.

**Specialization certification*

About 2,000 California lawyers have been certified as specialists in a state bar pilot program that identifies experts in tax, workers' compensation, criminal law and family law. To qualify as certified specialists in their fields, lawyers are required to pass examinations, meet experience requirements and continue their legal educations.

Recently the Board of Governors voted to establish a permanent speciality-certification program to replace the pilot program. Proposed rules and regulations for the permanent program now are being drafted by a special state bar Committee on Specialization.

**Maintenance of professional competence*

In addition to its pilot program in legal specialization, the state bar is engaged in a variety of efforts to encourage and maintain professional competence among attorneys.

With the University of California at Berkeley extension program, the bar co-sponsors a year-round series of Continuing Education of the Bar workshops, seminars

and practice sessions for its members. In fiscal 1980-81, CEB had more than 64,000 enrollments for 870 seminars in 65 California cities. In addition, the bar's sections offer educational programs in many areas of the law and in the area of law office management.

Currently, the bar's Committee on Maintenance of Professional Competence is preparing a survey of local bars in order to correlate the voluntary work being done in peer assistance, such as alcohol abuse programs, lawyer-to-lawyer referral programs, client relations committees, etc. It is anticipated that the survey may lead to publication of a resource book that would assist local bars in finding solutions to competence problems. The committee also is studying a bill that would require mandatory continuing legal education for California attorneys, although it recently made a report to a Board of Governors committee expressing its disapproval of this concept.

At the same time, the bar is monitoring a number of other competence-related developments: A proposed definition of the term "lawyer competence" tentatively has been approved by the Board of Governors and circulated for comment. A new Committee on Legal Specialization has been formed to create a permanent certification program. An ethics handbook for attorneys is being developed. A new system of disciplinary probation will go into effect this year.

California Young Lawyers Association efforts in the attorney competence area include sponsorship of programs - dealing with setting up a law practice, going into individual practice and other subjects - around the state;

compilation of a videotape library for groups on such topics as trial techniques and evidence, and the publication and sale of a handbook on opening a law office. Currently, the organization is revising a guide to professional conduct for the new practitioner.

In 1979, the state bar sponsored the country's first major conference on entry-level competence. In 1980, the first of a proposed series of board conferences addressing the competency question launched an effort to define minimum skills and to establish minimum standards for those skills that should be required to obtain and hold a license to practice law.

SUPPORTING LEGAL SERVICES DELIVERY AND ACCESS

**Lawyer Referral Services*

California has more than 85 Lawyer Referral Services operating in compliance with State Bar of California standards. Sponsored by bar associations, community groups or legal services organizations, these Lawyer Referral Services refer consumers to lawyers who may be able to handle their legal problems.

The state bar first adopted "Minimum Standards for a Lawyer Referral Service in California" in 1956 as a means of regulating and maintaining Lawyer Referral Services for the public benefit. The standards now in effect were adopted in May 1976 and most recently amended in April 1982.

In conjunction with administering the minimum standards, the bar's Lawyer Referral Services program serves as an informational clearinghouse, conducting statewide

workshops and distributing information about the operation and maintenance of Lawyer Referral Services.

**Voluntary Legal Services Program*

The State Bar's Voluntary Legal Services Program (VLSP) was created in 1978 to provide assistance to the private bar in the development of low- and no-fee legal services programs through technical assistance in the areas of program development, coordination of resources, recruitment of attorneys and development of training programs and materials.

As part of this support, VLSP has produced several training manuals for volunteer programs and attorneys. These include *The Pro Bono Tool Box*, a "how to" manual designed to assist in beginning or expanding a *pro bono* program; *Domestic Relations Overview and Update*, a current summary of family law for attorneys who handle such cases on a *pro bono* basis; *The Pro Bono Directory*, an up-to-date listing of free and reduced-fee legal services in California designed to permit appropriate referrals and to tell attorneys where they may volunteer their services; the *Legal Rights of Battered Women in California*, which discusses civil, criminal and personal options for victims of domestic violence; and the *Immigration and Deportation Defense Manual*.

Since its inception, VLSP has actively engaged in on-site follow-up and back-up activity related to program development and administration. Additionally, VLSP has coordinated and developed resources provided by others through its lending library and grant-proposal review to further assist local programs.

VLSP has been instrumental in the creation of numerous new programs and currently supports the efforts of a wide variety of existing programs throughout the state to maintain and expand the delivery of legal services to low income individuals through the voluntary effort of the private bar.

**Research and development of legal services proposals*

The bar's Legal Services Section has hundreds of volunteer lawyers, judges and public members working on 10 standing committees to help extend legal services to the poor, middle income people, prisoners, the aging, the handicapped and people with special needs. It also focuses on improving delivery services in the areas of consumer law, public interest law and criminal defense services.

The bar's work in promoting greater access to the legal system dates almost from the organization's beginning. In 1928, the state bar encouraged and fostered, through local bars, legal assistance committees which led to today's Legal Aid Society, Legal Services Foundation and other similar services for the poor. The bar also encouraged the United States Congress to create the Legal Services Corporation which has been a major source of funding for legal services programs in California and other states.

Recent section legislative activities include analysis of significant legislation affecting landlord-tenant relations, class action procedures, statutory compensation of public-interest attorneys, and expansion of the jurisdiction and litigant services offered by small claims court.

A major section legislative proposal that became law on January 1 will use interest on nominal and short-term deposits in unsegregated client-trust accounts to fund qualified legal-service programs and support systems. The state bar is beginning to develop procedures to implement the new law; however, actual implementation will not take place until the bar obtains an Internal Revenue Service ruling confirming the preliminary understanding that interest earned under the new law will not be considered taxable.

And, as Congress and President Reagan threaten to eliminate or substantially reduce LSC funding, the bar is working to ensure the continued delivery of legal services to the poor. In addition to active lobbying efforts, in June 1981 the bar sponsored a conference for state and local bar leaders aimed at assessing some of the ethical and delivery problems that California lawyers will face as the LSC prepares to cut back its services.

The section also reviews state bar policies relating to the delivery of legal services. For example, it was instrumental in formulating rules for lawyer advertising that facilitate access to the legal system.

**Conferences and workshops*

The Legal Services Section produces educational programs for both lawyers and the public on a variety of subjects - including group and prepaid legal services, public interest law, Lawyer Referral Services, nursing home litigation and special education. These programs deal with both substantive and practical concerns.

EDUCATING THE PUBLIC

**News-media relations*

The news-media relations program has established the state bar as the primary source for information on the legal profession and the law in California. It informs and educates the public on its legal rights, the law, the courts, lawyers and the legal profession through television, radio and the press.

This effort incorporates a variety of communications techniques including news releases; background papers; interviews with bar governors, staff and members; press conferences; editorial board meetings at major newspapers; background sessions for radio and television editorial directors and a special outreach program that this year involves the state bar president giving a series of major speeches on crime before prestigious public forums such as Town Hall in Los Angeles and the Commonwealth Club in San Francisco.

**Pamphlet program*

In the last year, the state bar has distributed approximately one million copies of pamphlets on consumer rights, the law and the legal system. Topics covered to date are small claims court, wills, lawyer/client fee arbitration, auto accidents, landlord/tenant rights, home-buying, bankruptcy, estate planning, contracts, dissolution, ways to find and hire a lawyer, lawyer discipline and, for young people a pamphlet titled *Do I Want to Become a Lawyer?*

Several new pamphlets will be issued during 1982. They will deal with substantive law topics, including arrest, child custody, immigration law and elderly rights.

State bar-produced radio public service announcements advertise free pamphlets and give legal tips to consumers about their rights and responsibilities under the law. Recorded by professional "voices" and broadcast regularly by more than 50 California radio stations, these 30-second PSAs will generate \$250,000 in free air time for California lawyers this year alone.

In 1982, pamphlets also are being promoted by news releases and law quizzes distributed to general-circulation newspapers, posters in public libraries and social security offices and advertisements in legal publications. Single copies of each pamphlet are provided free to consumers; multiple copies are sold at cost to lawyers, law firms, local bar associations and various institutions and groups.

IMPROVING THE ADMINISTRATION OF JUSTICE

**Assistance to legislators*

Each year, the state bar assists the legislature by reviewing hundreds of bills and making recommendations to both houses on the merits of many. The bar has sponsored a lengthy list of legislation including:

- A continuous streamlining and updating of small claims court procedures.
- Simplification of probate procedures such as broadening the scope of independent administration of estates, reduction of court involvement, and reform of inheritance tax law.

- The civil arbitration law.
- The attorney-client arbitration law.
- The "long-arm" statute.
- Revision of the General Corporation Code and the Nonprofit Corporation Code.
- Creation of the Judicial Performance Commission.
- The Civil Discovery Act.
- Bail reform measures. In fact, the bar has led the bail reform movement since its beginning.

Legislative positions adopted by the bar follow a lengthy process of research and evaluation by state bar sections and committees, usually originated by an inquiry from an individual member of the bar, a legislator, a government agency, or the bar's Conference of Delegates or Board of Governors.

The bar's 11 sections and 22 standing committees work year-round to study and propose improvements in the law. Last year, more than 500 members of standing committees and sections volunteered more than 34,000 hours to review, research and draft legislative proposals.

At the annual meeting of the bar's Conference of Delegates, 500 representatives of California local bar associations consider more than 100 resolutions - most of which would require legislation to be implemented. Resolutions adopted by the conference are referred for study, recommendation and report to an appropriate state bar section or committee. The Board of Governors and the conference Executive Committee review these reports and place high-priority legislative proposals either on the

state bar's legislative program or the conference legislative program.

Bills sponsored by other groups or individual legislators and dealing with the administration of justice, the delivery of legal services, the legal profession or the state bar are monitored closely by the bar's legislative advocate in Sacramento. Bills that would have a significant effect in those areas are referred for study to an appropriate state bar section or committee. In 1981, bar sections and committees reviewed 2,520 bills and amendments and issued reports on approximately 500 of them. On behalf of the state bar, the Board of Governors may support or oppose those bills that impact the legal profession or the practice of law generally, while individual committees and sections are permitted to support or oppose on their own behalf only bills that impact their own areas of expertise.

**Assistance to governor*

Under an informal relationship, the bar - on request - provides evaluations and advice to the governor. The requests are directed to an appropriate state bar section or committee for study and in many cases result in a joint effort by the bar and the governor to reform state law. For the past two years, the governor's office has worked closely on a variety of legislative matters with the bar's Family Law and Estate Planning, Trust and Probate sections.

**Assistance to Judicial Council*

By law, the state bar appoints four representatives to the state Judicial Council, and the bar's Board of Governors comments on proposed changes in the California

Rules of Court and other proposals being considered by the council. Among major items the board has considered are proposals to:

- *Open to the public proceedings of the Judicial Performance Commission in its investigation of the state Supreme Court's handling of the Tanner case. (Supported.)

- *Permit recording and photographic coverage of courtroom proceedings by radio and television media for an experimental one-year period. (Opposed.)

- *Revise rules of court relating to selective publication of appellate opinions. (Supported.)

State bar sections and committees also recently assisted the Judicial Council in its study of the "rent-a-judge" or judicial reference procedure.

In addition, the bar recommends nine names to the Chief Justice of the state Supreme Court for appointment to the 18-member Judicial Council's Advisory Committee on Legal Forms, which is responsible for modifying existing forms and developing new ones. A state bar staff attorney also works with the advisory committee as needed and the bar Board of Governors reviews all proposed forms changes before their adoption by the Judicial Council.

**Assistance to California Law Revision Commission*

This role, mandated by the legislature, involves working with the statutorily created California Law Revision Commission in studying, drafting and recommending to the legislature necessary reforms to update state

law. The commission now is working with the bar's Estate Planning, Trust and Probate Law Section, investigating areas in which it might be desirable and appropriate to conform California law to the Uniform Probate Code.

**State Bar Commission on Judicial Nominees Evaluation*

Since 1980, the bar has been mandated by law to provide for evaluation – by a body appointed by the bar Board of Governors – of all potential judicial candidates for California trial and appellate courts. The task is performed by the bar's 25-member Commission on Judicial Nominees Evaluation. During 1981, the commission made confidential recommendations on about 350 nominees, assisting the governor in making 107 appointments.

In earlier years, under an informal arrangement followed by the current governor and several of his predecessors, the bar traditionally had reviewed persons under consideration by the governor for appointment to the state's trial court bench. Occasionally, the bar also was asked to review a potential nominee to the appellate courts.

**Judicial system reform*

- Court reorganization: During the 1950s, the state bar co-sponsored California's first major court reorganization, for the first time dividing the state's trial courts into three branches – the justice, municipal and superior courts.

- Commission on Judicial Performance: Legislation sponsored by the state bar in 1976 created the California Commission on Judicial Performance, restructuring the membership and revising the functions of the former Judicial Qualifications Commission in an effort to improve procedures for evaluating questionable judicial performance and investigating allegations of judicial misconduct.

- Small claims court: Since the creation of the small claims court, the state bar has been active in instituting reforms in that system for the resolution of minor monetary disputes, including an ongoing review of the monetary jurisdictions for the court and recommending from time to time increases in that jurisdiction. In 1976, the state bar introduced bills to simplify the court's operations and increase public access to the small claims process - many of which became law in January, 1982.

PROVIDING MEMBER SERVICES

**California Lawyer*

Last year, the *California State Bar Journal* was revamped by Communications Division staff - working under a Board of Governors - appointed Editorial Board - as authorized by the bar governors in 1980. The *California Lawyer* - designed to keep members up to date on the bar, the legal scene, the law and issues affecting California lawyers - began publication in September, 1981.

**Annual Meeting*

The six-day meeting features section, committee and special state bar panels on legal developments, trends

and issues; the annual Conference of Delegates; Continuing Education of the Bar programs; and panels and products dealing with efficient law-office management. Last year's meeting included nationally known speakers such as F. Lee Bailey, Maureen Reagan and Irving Younger, and self-help panels for personal and professional improvement.

**Group Insurance*

Malpractice insurance: To help combat increases in the cost of malpractice insurance, the bar studied and approved the concept and approach of a prototype malpractice insurance company operated by lawyers. Currently, the lawyer-run Lawyers Mutual Insurance Company offers malpractice insurance to bar members.

Health, life, accident and disability insurance: The bar Board of Governors approved four plans, underwritten by different insurance carriers, to provide health care coverage for bar members, their employees and their dependents; life insurance for bar members and their dependents; accidental death and dismemberment coverage for bar members and their dependents, and disability income insurance for bar members.

**California Young Lawyers Association*

This organization, to which more than half of California's 75,000 lawyers belong, serves the special needs of bar members 36 years old and under or in practice less than five years. Among CYLA's benefits are:

- Representation on the bar Board of Governors. To better represent the viewpoint of the beginning lawyer, a seat was created on the Board of Governors for a member of CYLA, selected by the CYLA Board of Directors from among the organization's members. The first CYLA board member was seated in February, 1979. CYLA representatives on the board serve one-year terms.

- Booklets and a videotape program geared toward young lawyers and addressing such subjects as law practice economics and how to set up a law office.

- Discounts on certain Continuing Education of the Bar programs.

- Lawyer employment surveys to keep new lawyers and law school students informed of unemployment and underemployment rates among lawyers and about other job-market trends.

**Sections*

State bar sections exist to give bar members in a particular field of practice or who share common professional objectives or interests a vehicle for conducting legislative research and analysis; sponsoring specialized seminars, conferences and workshops; and discussing mutual problems and possible solutions. In addition, each section publishes a periodic newsletter for its members. The highly active sections are self-funding through dues contributions by the 29,310 lawyers belonging to the sections, except for legal, administrative and clerical support provided by the state bar.

The bar's 11 sections and their respective memberships are:

*Antitrust Law (52)(approved April, 1981)

*Business Law (5,868)

*Criminal Law (958)

*Law Office Management (9,247)

*Estate Planning,
Trust and Probate Law (3,921)

*Family Law (2,587)

*Legal Services (541)

*Patent, Trademark and Copyright Law (654)

*Public Law (730)

*Real Property Law (2,217)

*Taxation (2,535)

All but two - the Law Office Management and Legal Services sections - address a substantive area of the law. The Law Office Management Section presents programs to enhance lawyer competence by teaching lawyers proper business management techniques and studying possible ways of increasing the economical delivery of legal services to the public to improve their access to legal help.

Delivery issues also are the focus of the Legal Services Section, which was formed to enlist lawyer support in the innovation, development and improvement of systems to provide access to legal services, particularly to the middle-and low-income populations of the state. Areas of study by the section include Lawyer Referral Services, legal assistance for the poor, group and prepaid

legal services, criminal defense services, public interest law practice, consumer laws, legal services for senior citizens, legal services for the disabled and prison inmate legal aid. The section also researches, drafts and recommends legislation for the improvement of legal services delivery in California.

*Committees

Twenty-two state bar standing committees perform a variety of functions, ranging from legislative analysis to assisting lawyers suffering from alcoholism:

- *Administration of Justice
- *Adoptions
- *Alcohol Abuse
- *Appellate Courts
- *Committee to Confer with the California Medical Association
- *Condemnation
- *Continuing Education of the Bar
- *Courts
- *Ethnic Minority Relations
- *Environment
- *Fair Trial-Free Press
- *Federal Courts
- *Group Insurance Program
- *History of Law
- *Human Rights

- *Jury Instructions
- *Juvenile Justice
- *Maintenance of Professional Competence
- *Professional Responsibility and Conduct
- *Public Affairs
- *Rules and Procedures of Court
- *Workers' Compensation

*Regulatory Boards

- California Board of Legal Specialization: This body administers the bar's 10-year-old pilot program in legal specialty certification, which examines and certifies lawyers meeting state bar minimum guidelines to become specialists in the fields of workers' compensation, criminal law, family law and taxation law. Programs in civil litigation and probate law are under consideration.

- Committee of Bar Examiners: This committee supervises the bar's admissions process, including administering moral character investigations and bar-entrance examinations, and approves accreditation of law schools. In addition, the committee conducts an ongoing analysis of possible bar examination improvements, including a current effort to determine whether the exam should be expanded to include testing of an applicant's practical skills.

- State Bar Court: The court conducts hearings and makes decisions in, among other areas, disciplinary proceedings, moral character admissions cases, Client Security Fund matters and attorney fee disputes. The court offers an opportunity for individual lawyer and public

participation in the disciplinary process as volunteer investigation and hearing referees (currently, there are 540 referees - about 20 per cent of whom are non-lawyers) or as members of the 11-member Executive Committee of the State Bar Court or of the 15-member review department, which reviews all hearing panel decisions.

**Law Corporations*

The bar has responsibility for certifying and registering law corporations.

**Volunteers in Parole program*

The state bar helps young parolees gain a better understanding of the law and of lawyers as "people." With the California Youth Authority and local bar groups, it co-sponsors Volunteers in Parole programs that help lawyers and parolees form friendships, which many times keep these juvenile offenders from returning to the CYA. VIP programs now operate in Santa Clara, Los Angeles, San Diego, Sacramento and San Francisco counties.

Since it began in 1972, VIP has attracted approximately 1,200 attorneys and a similar number of parolees. Its 1981-82 budget for all five counties is funded chiefly by a \$140,000 CYA contribution. Since the yearly cost of confining a CYA ward currently is more than \$25,000, the program is self-supporting if it keeps just six parolees out of institutions for one year.

**Bar services program*

In its 1980 start-up year, this program "tested the water" in a number of areas to achieve better understanding among local, minority and specialty bars and between

these 145 voluntary bars and the state bar. One successful innovation is a monthly newsletter distributed to the 2,300 lawyers most active in the organized bar. CAL BAR VIEW focuses on state and local bar news, "how tos" for local bar programs, summaries of important board actions, deadlines not to miss and resources and ideas for the busy bar leader.

Other bar services projects under way include responding to information requests from bar leaders on a myriad of subjects; publication of the state bar *Directory*, a loose-leaf binder listing persons active in the California bar scene; a bar inventory or survey of voluntary bar association programs, operations, structure and needs to be published in a booklet that distills responses into a readable, useful format; a series of one-day meetings on issues of interest and importance to bar leaders such as lawyer discipline, unauthorized practice of law and public education; and a conference on the particular concerns of minority bar leaders.

Bar services also sponsors a program for bar leaders at the Conference of Bar Presidents; last year's half-day session focused presidents and executives on how to speak effectively and how to deal effectively with the news media. Staff also works with the newly-formed Executives of California Lawyers' Associations to bring programs on better bar management to the state's bar executives.

**Information services for members*

This state bar unit receives and answers over 400 specific questions per month, written or phoned in by

members of the legal profession and by the general public as well.

**Conference of Bar Presidents*

Planned and chaired by the Executive Committee of the Conference of Delegates, the annual Conference of Bar Presidents is a vehicle for an exchange between the state bar and local bar presidents about state bar activities and programs. It also is an opportunity for bar leaders to discuss with each other common issues and concerns and to explore various alternatives for performing local bar services. In addition, the conference allows local bar association officers to bring to the state bar Board of Governors the views of members in their local groups.

**Conference of Delegates*

The conference is the only opportunity for local bar associations to propose, analyze, debate and adopt resolutions dealing with a wide range of issues, including the regulation of the legal profession, the role and activities of the state bar and the bar Board of Governors and, mostly, legislative proposals primarily concerned with the administration of justice, the practice of law and the delivery of legal services.

The conference in 1979 was empowered by the bar Board of Governors to develop and carry its own legislative program for the first time in its history. Under this new system, conference resolutions that are not placed by the Board of Governors in the state bar's legislative program are categorized for further action, with Category I

proposals then pursued in Sacramento by the state bar's legislative advocate. Proposals placed in Category II through IV are advocated by the local bar association sponsoring the original conference resolution or are referred for further study to appropriate state bar sections or committees. Resolutions not dealing with legislation for the most part are advisory only to the Board of Governors.

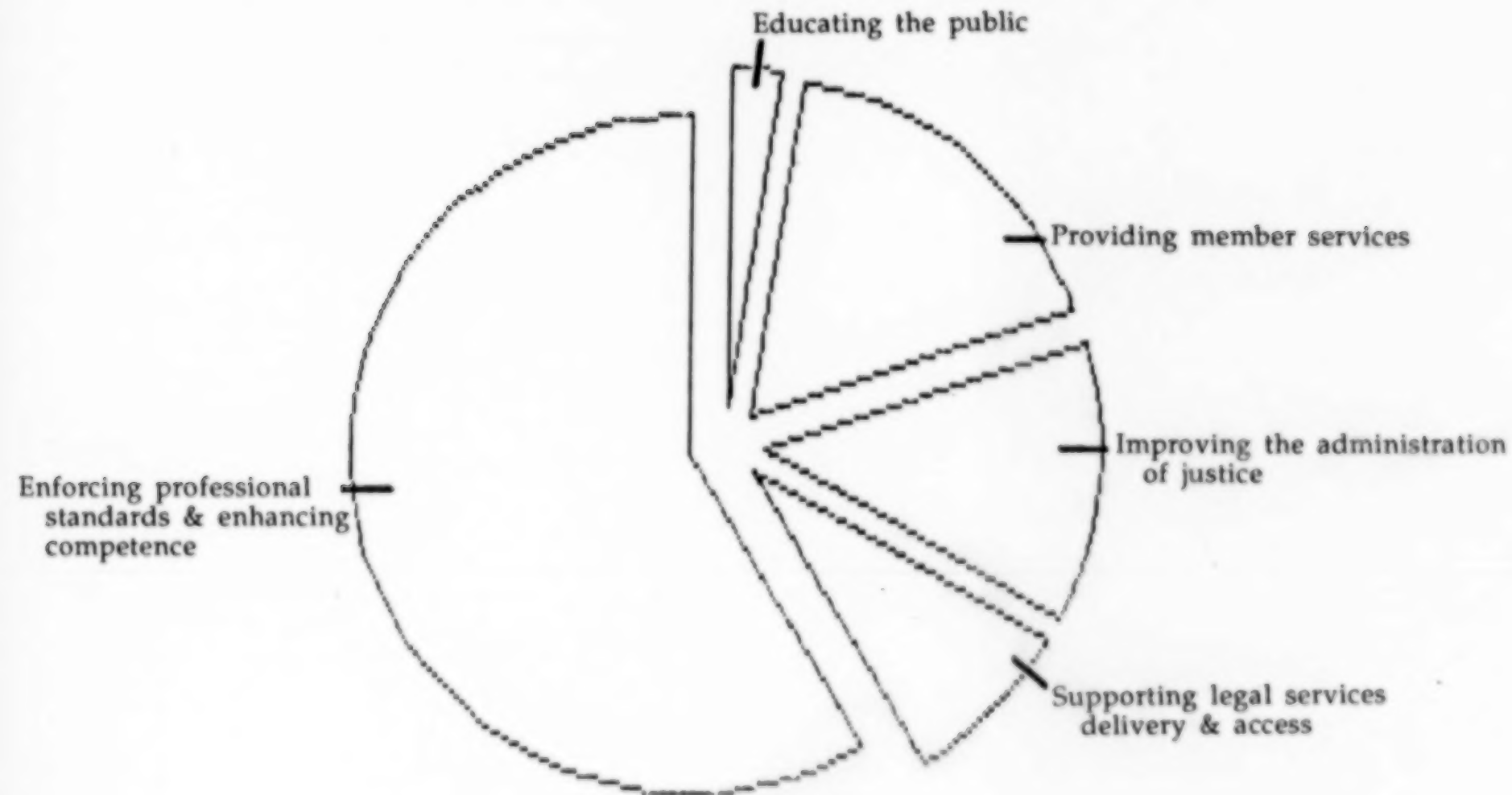
The conference offers a vehicle for significant numbers of lawyers to become involved with organized bar activities in the researching and drafting of local bar-sponsored conference resolutions. In addition, some 500 lawyers and approximately an equal number of alternatives attend the annual conference - held each year in September during the state bar Annual Meeting - as delegates from recognized local bar associations.

03/30/82

ENCLOSURE B

STATE BAR OF CALIFORNIA
MULTI-YEAR FEE CEILING
BACKGROUND

1982 PROGRAM EXPENDITURES



ENCLOSURE C
STATE BAR OF CALIFORNIA
Multi-year Fee Ceiling
Background

*Programmatic Analysis of
1982 General Fund Operating Budget*

These figures include general institutionalized costs of operation that of necessity must be shared by all, including the operation of the Board of Governors, General Counsel (house counsel), administrative services, financial services, computer services and personnel services.

ENFORCING PROFESSIONAL STANDARDS
AND ENHANCING COMPETENCE

<u>Program Description</u>	<u>Program Cost</u>
Law Corporations	\$ 108,907
Discipline (including Client Security Fund)	
a) Investigations and Prosecutions (Trial Counsel)	5,187,068
b) Adjudication (State Bar Courts)	1,531,182
c) Court Review (General Counsel)	468,056
Admissions	
a) Moral Character Investigations (Trial Counsel)	287,256
b) Legal Advice/Court Review (General Counsel)	208,156
Unuauthorized Practice of Law	252,967
Department of Professional Responsibility and Conduct	280,004
Practical Training of law students	79,153
TOTAL	<u>\$8,402,749</u>

*Programmatic Analysis of
1982 General Fund Operating Budget*

SUPPORTING LEGAL SERVICES
DELIVERY AND ACCESS

<u>Program Description</u>	<u>Program Cost</u>
Legal Services Section	\$ 152,469
Legal Services Department	464,322
Lawyer Referral Services	106,602
Voluntary Legal Services Program	378,839
Hot/line feasibility study	21,390
LSC caseload	71,311
TOTAL	<u>\$1,194,933</u>

*Programmatic Analysis of
1982 General Fund Operating Budget*

IMPROVING THE ADMINISTRATION OF JUSTICE

<u>Program Description</u>	<u>Program Cost</u>
Commission on Judicial Nominees Evaluation	\$ 94,235
Volunteers in Parole	37,027
Legislative Representatives' Office	420,080
Conference of Delegates	313,811
Sections and Committees Support	1,006,931
TOTAL	<u>\$1,872,084</u>

*Programmatic Analysis of
1982 General Fund Operating Budget*
PROVIDING MEMBER SERVICES

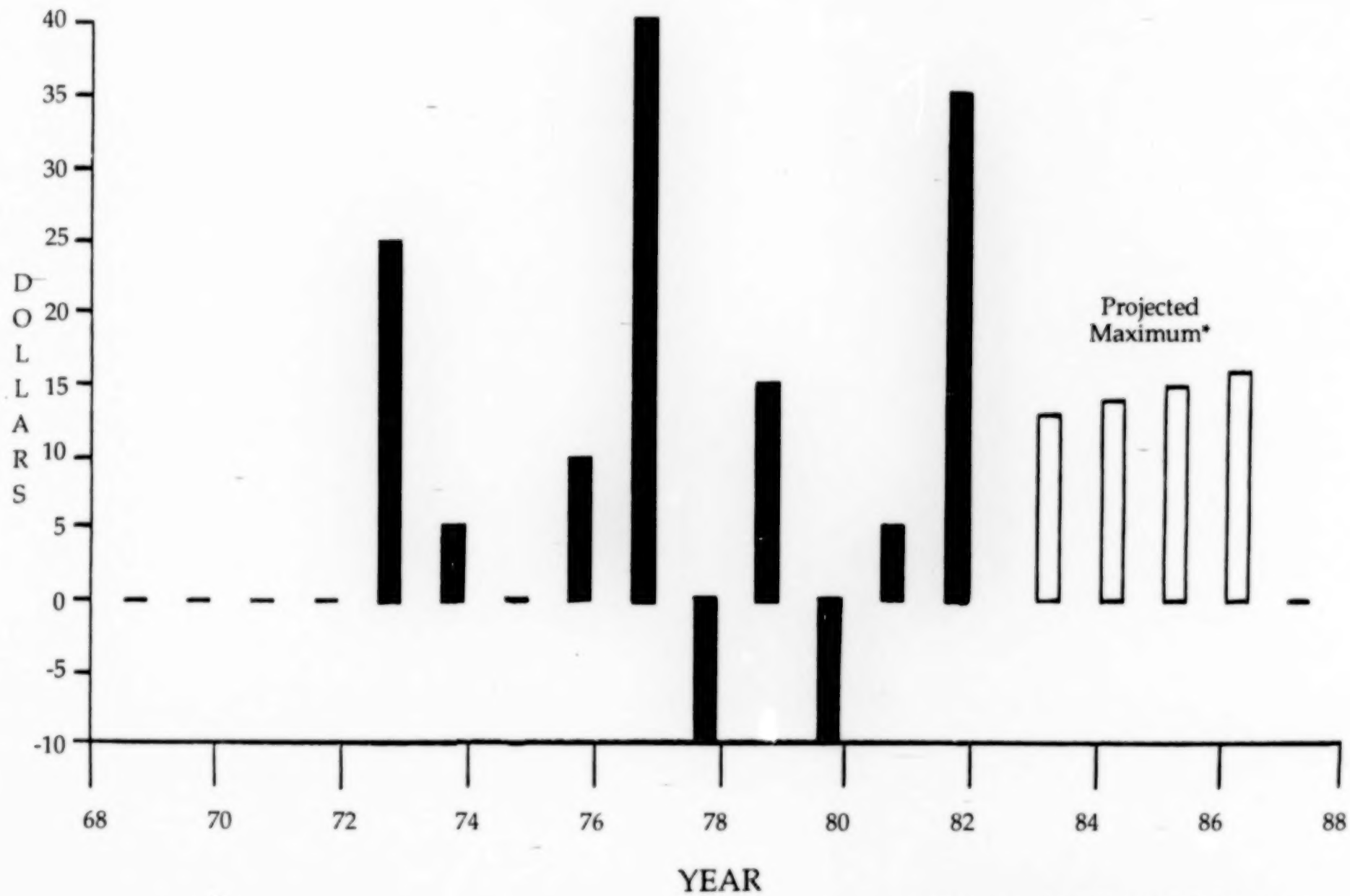
<u>Program Description</u>	<u>Program Cost</u>
Member Group Insurance Program	\$ 52,402
Annual Meeting	481,999
Bar Services Programs	221,186
Membership Communications	1,479,526
CYLA	162,729
Maintenance of Professional Competence	48,453
Alcohol Abuse	64,465
TOTAL	<u><u>\$2,510,760</u></u>

*Programmatic Analysis of
1982 General Fund Operating Budget*
EDUCATING THE PUBLIC

<u>Program Description</u>	<u>Program Cost</u>
News Media Relations	\$ 117,916
Public Education Programs	136,080
Information Services	60,394
Public Affairs Committee/Media	20,138
TOTAL	<u><u>\$ 334,528</u></u>

STATE BAR OF CALIFORNIA
MULTI-YEAR FEE CEILING
BACKGROUND

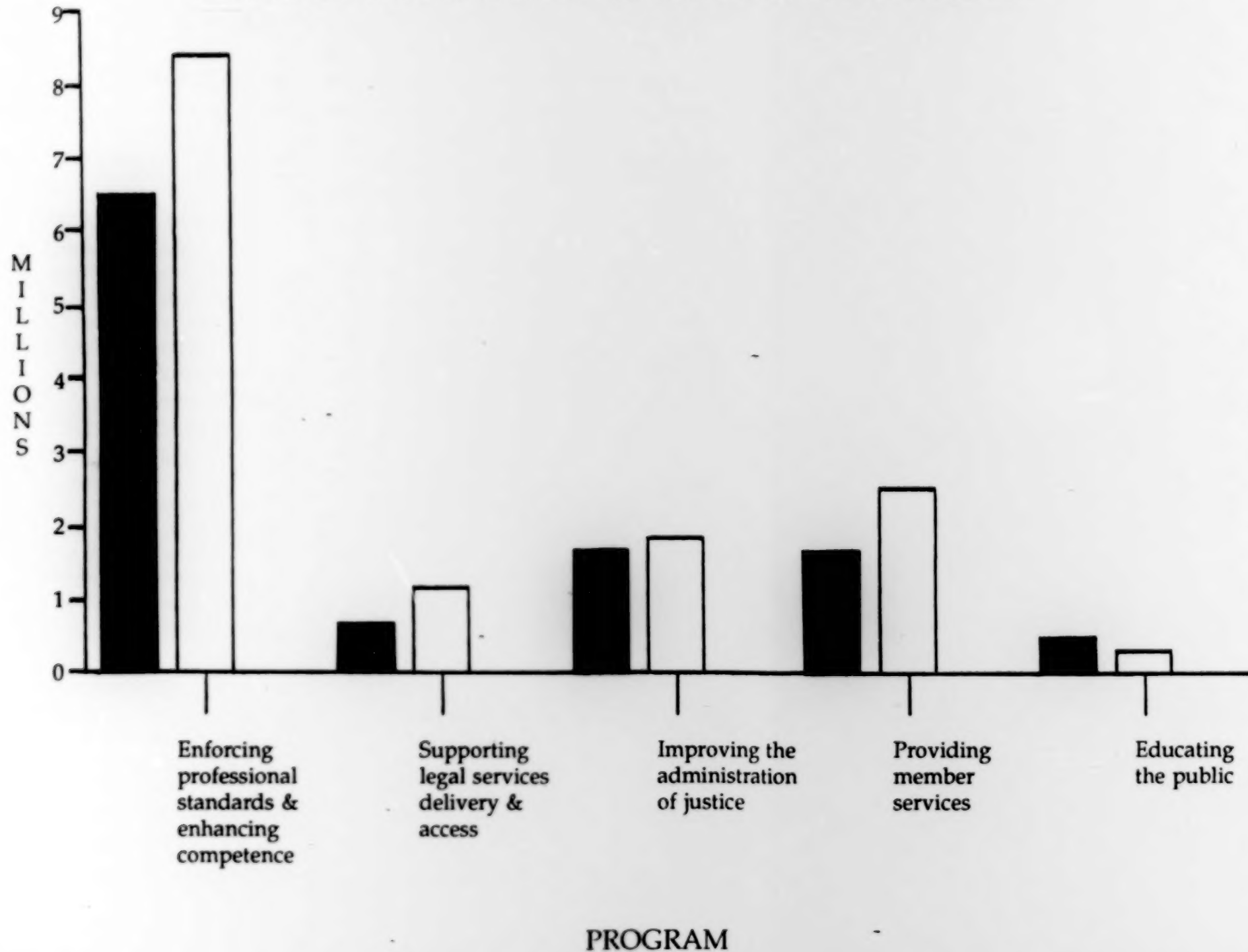
STATE BAR BASIC MEMBERSHIP FEE INCREASES 1969-1986



*Assuming 8 per cent inflation

STATE BAR OF CALIFORNIA
MULTI-YEAR FEE CEILING
BACKGROUND

COMPARISON OF 1981 AND 1982 PROGRAM EXPENDITURES



ENCLOSURE F
STATE BAR OF CALIFORNIA
MULTI-YEAR FEE CEILING
BACKGROUND
THE STATE BAR OF CALIFORNIA
General Fund

COMPARISON OF 1981 EXPENSES WITH 1982 BUDGET

<u>DIVISION/DEPARTMENT</u>	<u>1981 EXPENSES</u>	<u>1982 BUDGET</u>	<u>INCREASE</u>
(Accrued Basis)			
TRIAL COUNSEL			
Division Office	173407	223141	49734
Trial Counsel - SF	935636	1251674	316038
Trial Counsel - LA	1495864	2079527	583663
Client Security Fund	59092	83656	24564
Moral Character	175427	201434	26007
Subtotal: Amount	2839426	3839432	1000006
Percent of Total	25.76	26.26	0.50
STATE BAR COURT			
Division Office	88805	96378	7573
Court	160735	200293	39558
Court Administration	342772	500440	157668
Court Counsel & Improvement	173932	219695	45763
Fee Arbitration	18504	35793	17289
Probation Monitoring	0	21365	21365
Subtotal: Amount	784748	1073964	289216
Percent of Total	7.12	7.35	0.23
GENERAL COUNSEL			
Division Office	102716	112519	9803
General Counsel	676212	748885	72673
Unauthorized Practice	150111	177433	27322
Prof. Responsibility & Conduct	100181	196440	96259
Law Student Training	1900	55564	53664
Subtotal: Amount	1031120	1290841	259721
Percent of Total	9.35	8.83	-0.53

(Column entitled "Note" had no entries and has been deleted.)

<u>DIVISION/DEPARTMENT</u>	<u>1981 EXPENSES</u>	<u>1982 BUDGET</u>	<u>INCREASE</u>
LEGAL SERVICES			
Legal Services Department	259028	325606	66578
Legal Services Section	73370	106921	33551
Lawyer Referral Services	44111	74761	30650
Voluntary Legal Services	148558	265682	117124
Hot Line Feasibility Study	0	15000	15000
LSC Caseload	0	50000	50000
Subtotal: Amount	525067	837970	312903
Percent of Total	4.76	5.73	0.97
LAW REFORM			
Division Office	80652	0	-80652
Committee Assistance	543137	706153	163016
Sacramento Office	278712	294602	15890
Conference of Delegates	174651	220094	45443
California Young Lawyers Assn.	84666	114140	29474
Alcohol Abuse	28462	45194	16732
Subtotal: Amount	1190280	1380183	189903
Percent of Total	10.80	9.44	-1.36
COMMUNICATIONS			
Division Office	126638	124058	-2580
Media Relations	155115	82804	-72311
Public Education	107789	95559	-12230
Annual Meeting -	317429	338031	20602
Public Meetings	28244	0	-28244
Information Services	48962	42415	-6547
Bar Services	151713	155125	3412
Public Affairs Committee/ Media	26476	14142	-12334
Volunteers in Parole	34771	25955	-8816
Magazine	609777	1037648	427871
Subtotal: Amount	1606914	1915737	308823
Percent of Total	14.58	13.10	-1.47

<u>DIVISION/DEPARTMENT</u>	<u>1981 EXPENSES</u>	<u>1982 BUDGET</u>	<u>INCREASE</u>
GOVERNMENT AND MANAGEMENT			
Government	292401	296750	4349
Management	108229	268727	160498
Judicial Evaluation	73877	66109	-7768
Subtotal: Amount	474507	631586	157079
Percent of Total	4.30	4.32	0.02
FINANCE AND OPERATIONS			
Division Office	73839	148469	74630
Administrative Services	92297	119319	27022
Office Services - LA	145951	161442	15491
PBX - LA	17067	17228	161
Office Services - SF	122833	135705	12872
PBX - SF	56661	68667	12006
Print Shop	103535	126228	22693
Purchasing	30651	53577	22926
Building Management - SF (new)	322867	287549	-35318
Building Management - SF (old)	39361	64005	24644
Building Management - LA	170835	207161	36326
Financial Services	339923	366222	26299
Information Services	73573	81508	7935
Computer Services - SF	252087	342368	90281
Computer Services - LA	6716	26125	19409
Membership Records	293489	366657	73168
Records & Archives	30391	33661	3270
Publications	10507	10000	-507
Word Processing	150300	212956	62656
Personnel - SF	164397	178054	13657
Personnel - LA	52967	66774	13807
Special Services & Insurance	90717	114439	23722
Law Corporations	53458	76284	22826
Subtotal: Amount	2694422	3264398	569976
Percent of Total	24.45	22.33	-2.12

<u>DIVISION/DEPARTMENT</u>	<u>1981 EXPENSES</u>	<u>1982 BUDGET</u>	<u>INCREASE</u>
GENERAL			
Maintenance of Prof. Competence	24259	34056	9797
Executive Staff Salary Pool	0	149500	149500
Salary Savings	0	-250000	-250000
Amortization of Admissions Deficit	0	125000	125000
Grant to Admissions	0	67000	67000
Interdepartmental Credits	-116023	-119135	-3112
Vacation Accrual Adjustment	-42646	0	42646
Change in Vacation Reserve	-44319	20000	64319
Depreciation on Buildings	54522	54522	0
Subtotal: Amount	-124207	80943	205150
Percent of Total	-1.13	0.55	1.68
GRAND SUBTOTAL Amount	<u>11022277</u>	<u>14315054</u>	<u>3292777</u>
Percent of Total	100.00	97.92	-2.08
CONTINGENCY RESERVE			
Amount	0	304633	304633
Percent of Total	0.00	2.08	2.08
GRAND TOTAL (Accrued Basis)	<u>11022277</u>	<u>14619687</u>	<u>3597410</u>

<u>DIVISION/DEPARTMENT</u>	<u>1981 EXPENSES</u>	<u>1982 BUDGET</u>	<u>INCREASE</u>
ADJUSTMENTS (Accrued Basis to Cash Basis)			
Depreciation (non-cash expense)	-223726	-247867	-24141
Vacation Reserve (non-cash expense)	44319	-20000	-64319
Capital Acquisitions (cash expense)	481655	197666	-283989
Subtotal:	<u>302248</u>	<u>-70201</u>	<u>-372449</u>
ADJUSTED TOTAL (Cash Basis)	<u>11324525</u>	<u>14549486</u>	<u>3224961</u>

NOTES:

- 1 The State Bar's general fund operating budgets are prepared and presented on an accrued basis. The 1982 budget figures do not yet include depreciation on 1982 capital acquisitions.
- 2 Non-cash items.
- 3 The figures include depreciation (except depreciation on 1982 capital acquisitions) and do not include the total cash cost of capital acquisitions. The total cash cost of capital acquisitions in 1981 was \$481,655 (\$65,167 in loan payments for capital acquisitions in prior years, plus \$416,488 in capital acquisitions in 1981). The total cash cost of capital acquisitions in 1982 is \$344,415. The total cash cost of both 1981 and 1982 capital acquisitions is being financed by a loan taken out in 1982; principal and interest payments on the loan will total \$197,666 in 1982.

EXHIBIT 5

AGENDA ITEM

June 204

Policies and Procedures for the Implementation of State Bar Legislative Programs.

TO: THE BOARD OF GOVERNORS

In fulfilling the mandate given it by your Board to "continuously review State Bar Legislative Policies and make recommendations to the Board for changes as appropriate; (and) approve, publish and evaluate procedures applicable to all State Bar entities implementing such policies", your Committee on Legislation has drafted and requests your approval of the two documents attached hereto.

Attachment I - "Legislative Program of the State Bar of California, Policies and Procedures", - is intended as an informational exposition of the "What, Why and How" of the State Bar's involvement in the legislative area for legislators, members of the Bar and others. In general terms it sets out the purpose, legal basis and scope of State Bar Legislative activity together with the procedures by which that activity is carried out. It describes the activities of the various State Bar entities involved and closes with a short history of State Bar Legislative activity through the years.

Attachment II - "Procedures for Implementing State Bar Legislative Policies" - sets out specific procedures to be followed by State Bar entities engaged in legislative

activities. It defines areas where Sections and Committees, and the Conference may act in their own names in coordination with the Legislative Representative and notifying the Board Committee of all such actions. Actions in the name of the State Bar are reserved to your Board.

The Procedures are the result of many conferences with the Executive Committee of the Conference, the Chairs of the State Bar Sections and Committees involved in legislation, the Legislative Representative and staff. It is believed they satisfy the expressed intent of your Board to more fully utilize the intellectual resources of the members of the Bar, particularly the Conference of Delegates and State Bar Sections and Committees in the legislative area.

Your Committee requests and recommends that both these documents be approved.

/s/ William B. Eades
William B. Eades, Director
Department of Sections and Committees

Attachment I

LEGISLATIVE PROGRAM OF THE STATE BAR
OF CALIFORNIA POLICIES AND PROCEDURES
POLICIES

I. Purpose of State Bar Legislative Activity

A. Overall Purpose

The primary purpose of State Bar legislative activity is to bring the expertise of California's

lawyers to the assistance of the people of the State of California through the legislative process. The focus of this activity is the maintenance and improvement of law, the legal system, and the administration of justice.

B. *Specific Objectives*

1. *Institutional preservation and advancement.* Through the legislative process the State Bar seeks to preserve and advance its primary mission through the self-regulation of the legal profession.
2. *Information concerning law and the administration of justice.* The State Bar seeks to serve as a resource for current analysis and information on that area of the law broadly defined as the administration of justice.
3. *Broad utilization of members.* The State Bar seeks to attract broad participation of its members in its legislative activity, because they bring a wide range of diverse skills and expertise to contemporary legal issues and problems.

II. *Legal Basis for State Bar Legislative Activity*

Section 23 of the original State Bar Act adopted in 1927 (Chapter 34, Statutes of 1927) provided that "the Board shall have power to aid in the advancement of the science of jurisprudence and the improvement of the administration of justice." In 1945 this provision was expanded to include, "but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public" (Business and Professions Code Section 6031).

In creating the Law Revision Commission in 1945 to "recommend such changes in the law it deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of the state into harmony with modern conditions" (Government Code Section 10330), the Legislature also directed the State Bar to "assist the commission in any manner the commission may request within the scope of its powers or duties" (Government Code Section 10307).

The Legislature has recognized and called upon the State Bar for assistance in reviewing and implementing legislative proposals. In establishing the Small Claims Experimental Project in 1976, the Legislature directed the Board of Governors to appoint two State Bar representatives to assist with evaluation of the project and to propose further action (Code of Civil Procedure Section 119). In 1979 the State Bar was directed to maintain a list of qualified attorneys from which "special masters" could be appointed by courts to conduct searches of attorney, doctor, and clergy offices (Penal Code Section 1524).

III. *Scope of State Bar Legislative Activity*

There are four areas that fall within the scope of the legislative program of the State Bar:

- A. Matters which concern the State Bar itself as the primary agency responsible for the self-regulation of lawyers, for example, legislation affecting State Bar fees or the regulatory functions of discipline and licensing.
- B. Matters bearing on the administration of justice and the practice of law which concern the profession at large, for example, legislation affecting the selection and qualification of judges, arbitration in lieu of civil process, the size of juries, or delivery of legal services to the indigent.

- C. Matters under the umbrella of the "administration of justice" which concern a limited or specialized section of the profession, for example, patent legislation or revision of the nonprofit corporations code.
- D. Law-related questions of public policy which concern society as a whole, and which may affect other institutions with even greater impact than they affect the bar, but on which the expertise of the bar is helpful, for example, constitutional questions or certain matters that are proposed for referenda to the public.

State Bar legislative activity involves itself in these areas regardless of whether a matter is sponsored by the State Bar or is one of the many "bills of others" introduced each year such as the arbitration of civil disputes bill of 1978, which was proposed by the Governor's Office, and recent bills affecting the scope of State Bar responsibility which were sponsored by legislators without the support of the State Bar.

PROCEDURES

I. Participants and Their Respective Responsibilities

A. The Board of Governors and the Board Committee on Legislation

The Board of Governors has overall responsibility for the State Bar legislative program. The Board is responsible for positions on legislative matters that are to be publicly attributed to the State Bar and for the resolution of conflicts that may arise among various participants in the legislative program.

The Board of Governors relies upon its Committee on Legislation, which serves as an advisor to the Board on legislative matters and as liaison to other participants such as the Conference of Delegates, committees and sections, and the State Bar

Legislative Representative. Between meetings of the Board the Board Committee acts for the Board on legislative matters; such actions are reported to the Board at the earliest possible date for ratification or modification as appropriate.

B. The Conference of Delegates and Its Executive Committee

The Conference of Delegates consists of representatives of local bar associations and meets once each year to consider various proposals, many of which are intended for legislative action. The Executive Committee of the Conference consists of representatives from the various State Bar districts, and is responsible for oversight of the annual conference and for implementation of the Conference program.

C. Committees and Sections

The Board of Governors has from time to time created advisory standing and special committees of State Bar members to assist in the development of its legislative program. To provide broader input and involve a greater number of bar members, the Board in 1975 approved the establishment of sections open to all members of the State Bar interested in a particular field of law. Sections operate through executive committees which are appointed by the Board of Governors and have their own committee structure. There are presently eleven State Bar sections (with a total of more than 22,000 members), covering business law, criminal law, economics of law practice, estate planning, trust and probate law, public law, real property law, legal services, family law, patent and copyright law, and tax law.

State Bar committees, including the executive committees of the sections, range in size from seven to twenty-five members. State Bar policy intends to insure a balanced representation of all

practitioners within a particular field through considering factors such as geography, age, sex, and ethnicity when making appointments to committees. From time to time the Board of Governors also appoints commissions, which differ from committees in that their membership includes representatives of other professions or of the public at large.

D. *Legislative Representative*

The State Bar employs professional representatives who are housed in its Sacramento office and who serve as liaison to legislators and their staff and to other government officials with respect to all aspects of the State Bar's legislative program.

E. *Legislative Program Staff*

The State Bar employs support staff to coordinate all aspects of its legislative program, to maintain continuing liaison with the office of the Legislative Representative, and to assist with the research and studies of committees and sections on legislative matters. Staff insure prompt and complete reporting.

II. *Formulation and management of the Legislative Program*

A. *The Board of Governors and the Board Committee on Legislation*

The Board of Governors meets regularly to act upon recommendations of the Board Committee to determine State Bar positions with respect to legislative matters and to monitor amendments that are proposed during the legislative process.

The Board Committee on Legislation meets more frequently and includes in its meetings representatives of the Executive Committee of the Conference. Following the annual Conference of Delegates the Board Committee reviews and

makes recommendations on the legislative program proposed by the Conference according to the procedures below. The Board Committee also continuously monitors referrals of bills of others to committees and sections, and the reports of committees and sections in response to referrals, and makes recommendations to the Board of Governors concerning such bills.

B. *The Conference of Delegates Legislative Program*

In early March of each year the Executive Committee of the Conference forwards resolutions submitted by accredited local bars for the coming Conference to the appropriate State Bar committees and sections for preliminary review and recommendation as to whether the principle of the resolution should or should not be adopted. These recommendations are submitted to the Conference Resolutions Committee and ultimately to the delegates themselves.

Immediately after the Conference adjourns, resolutions adopted by the Conference are forwarded to the appropriate State Bar committees and sections for a preliminary recommendation (if not previously submitted) or for in-depth study leading to a detailed report to the Conference Executive Committee at the earliest practical date, and no later than December 31.

As early as practicable following the Conference, the Executive Committee classifies resolutions adopted according to the following categories:

Category I. These are resolutions of such importance that they should be the primary focus of the Conference legislative program on which the full resources of the Conference and of the State Bar's legislative representatives are used to secure enactment.

Category II. These are resolutions of importance which cannot for various reasons (see

section F below), be accommodated in the Conference's primary category. The local bar association sponsoring such a resolution and other interested bars are advised that it has been approved and placed on the local bar coordinated program. The Conference Legislative Coordinator, acting under supervision of the Legislative Representative, assists those bar associations which seek to introduce such resolutions on their own behalf.

Category III. These are resolutions that are referred back to their proponents for handling on the local bar grassroots level as Conference work product; however, recognizing that directly supported legislative activity is limited by available resources and political considerations, these resolutions receive no further State Bar or Conference resources.

Category IV. These are resolutions that require redrafting or further study and, for the most part, are referred to State Bar sections and committees.

Following review and recommendation by the Board Committee on Legislation and action by the Board of Governors, Category I and II resolutions become the directly supported part of the Conference legislative program for the coming year. The Board of Governors has reserved the authority to prohibit Conference sponsorship of any resolutions in conflict with established State Bar policy and to place any resolution on the State Bar's own legislative program.

C. Committees and Sections

Committees and sections meet regularly throughout the year to review resolutions from the Conference, proposals referred by the Board of Governors, and bills of others submitted to

them by the Legislative Representative. They may also consider matters for the legislative program which they wish to propose on their own initiative. Reports and recommendations of committees and sections are reviewed either by the Executive Committee of the Conference or by the Board of Governors depending on the source of the proposal. With respect to a bill that has been referred by the Legislative Representative to a committee or section, the section or committee is required to recommend the priority with which the State Bar should address the bill:

Priority 1. To find and recommend that the measure is of such significance that it should be integrated into the State Bar's legislative program and entitled to full support of all resources of the State Bar.

Priority 2. To find and recommend that the measure is not of such significance as to receive full support of the State Bar, but is of sufficient significance to the committee or section that the committee or section should be permitted to follow through in the Legislature. In such instances the resources of the Legislative Representative and other State Bar staff are available to assist the committee or section.

Priority 3. To find and recommend that the measure is not of such significance as to justify any position or action on the part of the State Bar.

Where representatives of a committee or section appear at hearings on behalf of their committee or section (under a blanket authority from the Board of Governors with respect to priority 2 matters or to matters which the committee or section itself initiates), all such appearances are coordinated with the Legislative Representative

through notice at least 24 hours in advance of the appearance.

D. *Legislative Representative*

It is the responsibility of the Legislative Representative to secure authors for State Bar legislative proposals, to distribute copies of committee and section reports regarding such proposals, to arrange for testimony at legislative hearings, to monitor proposed amendments through the course of the legislative process, and to maintain continuous communication with the Board of Governors (through the Board Committee on Legislation) and with the legislative program staff.

The Legislative Representative reviews all bills of others and refers them to committees and sections as appropriate for comment.

The Legislative Representative reports regularly to the Board Committee on Legislation upon matters referred, and the legislative program staff works with the Legislative Representative to insure appropriate action of committees and sections with respect to matters referred.

E. *Legislative Program Staff*

It is the responsibility of legislative program staff to assist the Conference of Delegates and its Executive Committee and to assist committees and sections with respect to all legislative matters. In particular it is their responsibility to assist with administrative matters and research and preparation of reports, and to inform the Board of Governors (through the Board Committee on Legislation) and the Legislative Representative of actions and recommendations of committees and section.

F. *Criteria for Determining Priorities with Respect to Legislative Proposals*

To assist in the determination of their legislative priorities and subsequent implementation, the Board of Governors and the Executive Committee of the Conference consider the following factors:

Threshold Considerations

1. *Importance* to the State Bar, the legal profession, the administration of justice, and the public generally.
2. *Expectations* of the public, legislators, and members of the profession regarding the State Bar's role in the particular policy involved.
3. *Level of support* within the profession.
4. *Likelihood of success* within the legislative process.

Other Related Considerations

1. *Importance to society.* Effect of an implemented policy on our total system of government, laws, and relationships of individuals to one another and to society as a whole.
2. *Expertise of lawyers as lawyers.* Do lawyers have a unique province of understanding or a unique role because of their training, knowledge, and experience as lawyers?
3. *Currency.* An appraisal of the currency and relevance of a matter. Will it likely capture attention of key decision-makers in the reasonably foreseeable future?
4. *Potential for achievement.* An appraisal of the chance that a State Bar policy or position can be successfully achieved in whole or substantial part.

5. *Image of profession.* A judgment of how positively the general or the specially concerned public will view the profession in light of a particular policy or position.
6. *Importance to practice of law.* This deals with those "trade" issues which affect lawyers as lawyers, regulating or influencing the basic practice of law.
7. *Scope of State Bar interest.* An appraisal of internal State Bar interest or concern. Is it a matter with association-wide interest, or is it limited to a few interested parties?
8. *Opportunity for impact.* Will a State Bar policy, position, or effort have an impact on actions of decision-makers? Will it contribute to resolution of the issue?
9. *Strength of State Bar support.* An appraisal of the degree of uniformity of the viewpoint which underlies a State Bar position.

SUMMARY HISTORY OF STATE BAR LEGISLATIVE ACTIVITY

At its first convention in 1928, the State Bar devoted two full sessions to discussion of reports of committees concerning proposed changes in the law and adopted resolutions approving and urging adoption of constitutional amendments affecting jury fees, criminal jury trials, and appellate court jurisdiction and statutes creating summary judgment procedures revising the corporation laws, simplifying civil procedures (including probate), and expediting criminal trials. Since that time the State Bar has played a major role in the drafting and enactment of more than one thousand legislative changes. Prominent among these have been the Family Law Act, the Civil and

Administrative Discovery Acts, the service of process and long arm statutes, the arbitration of civil disputes, summary probate procedures, the Nonprofit Corporations Act, two revisions of the Corporations Code, the Commercial Code, the Evidence Code, and almost every uniform statute adopted in California.

During the first five years of the State Bar's existence, the legislative program was developed at the annual convention through reports of "sections" and a few special committees. "Sections" were, in effect, individual committees located in the principal geographic areas of the state, each supposedly studying the same legislative problems. This proved unworkable, primarily because of the differing interests and problems of the different areas of the state, and in 1933 the statewide Committee on Administration of Justice (CAJ) was created.

The CAJ was assigned responsibility for studying the administration of justice generally, coordinating the work of all special committees, arranging for research, preparing measures for legislative action, and overseeing legislative activity on measures adopted by the annual State Bar convention. As the law developed and became more complex and the size of the bar increased, other standing committees (and, more recently, sections) were created to undertake similar responsibilities in specialized areas of the law.

Almost immediately after the State Bar was created, however, problems arose because the unified bar failed to coordinate its lobbying effort in Sacramento with local bar associations. In response to these problems, the Board of Governors in 1934 created the "Conference of Bar

Association Delegates," now called the Conference of Delegates. In recent years 65 to 70% of the State Bar's legislative program has come from the work of the Conference. Nevertheless, there was criticism that the Board was not responsible to the Conference because the Board did not support various Conference-approved resolutions dealing with broad areas of social policy. In response to such criticism, the Board in 1979 gave the Conference authority to undertake its own lobbying effort for its legislative measures.

Today the State Bar has fourteen standing committees, ten sections, and two commissions, each composed of experts in a particular field who study a myriad of proposals for law reform, a number of which have been developed by the Bar in conjunction with another entity such as the Judicial Council, the Law Revision Commission, the Commission on Uniform State Laws, or a committee of the state Legislature, and the most significant of which are ultimately retained by the State Bar for sponsorship in the legislative arena.

Attachment II

PROCEDURES FOR IMPLEMENTING STATE BAR LEGISLATIVE POLICIES

I.

PROCEDURES FOR HANDLING AFFIRMATIVE PROPOSALS

A. General

Proposals that the State Bar sponsor legislation to correct a perceived problem in the operation of a law or

support a change in a statute, rule of court or administrative procedure are normally referred by the Board of Governors or the Secretary of the State Bar to a section or committee for study and report with recommendations to the Board of Governors. A report of such referrals is made to the full Board. Proposals which will require more than six months study to complete, those which are controversial and those which may result in recommendations which could substantially change the law, first must be reviewed by the Board of Governors, usually acting through its Committee on Legislation. If appropriate for study and report, they are then referred by the Board Committee. Other proposals may be referred by the Secretary of the State Bar. The Secretary refers proposed conference resolutions to the appropriate section or committee in March of each year and the referral of approved resolutions in October. Reports on these resolutions so referred are submitted to the Conference Executive Committee.

B. Section and Committee Authority

1) Introduction of Conference Resolutions

Sections, without prior authority or notification of the Board Committee on Legislation, may introduce through their delegates, resolutions for consideration by the Conference of Delegates in accordance with Article VI of the Rules of Regulations of the State Bar.

2) Specific Legislative Proposals

Proposals other than Conference Resolutions for State Bar sponsorship of legislation, whether studied at

the request of the Board, the Secretary or upon the initiative of a section or committee should also be reported to the Board of Governors in the format set out in Attachment A. As with Conference Resolutions, the name of a committee or section member who on behalf of the committee or section may be called upon by the Legislative Representative to testify on the proposal and to accept or reject amendments should be listed in the report.

3) Blanket Authority

The Board Committee on Legislation may, upon request or its own initiative, authorize a section or committee to take all action necessary to attain a particular legislative objective in its field of interest in the name of the State Bar. This includes but is not limited to working with another entity to revise the law, administrative rules, regulations, forms or procedures within the area of expertise of the section or committee.

Requests for such authority should include the names of other State Bar entities interested in the matter, appropriate comments and recommendations of such entities, the length of time the section or committee expects to be involved and any fiscal impact the project may have on the State Bar budget.

4) Technical Revisions

A section or committee, on its own initiative and in its own name (not on behalf or in the name of the State Bar), may take such affirmative action as it deems advisable aimed at the simplification or technical revision of

the law or administrative rules, regulations, forms or procedures within its area of expertise. Any such action shall be promptly reported to the Board Committee on Legislation and, if legislation is involved, coordinated with the State Bar Legislative Representative. Any proposed legislation shall be reported to the Board Committee on Legislation prior to its introduction in the legislature.

C. Conference Resolutions

In March of each year, proposed Resolutions to be submitted to that year's Conference of Delegates will be referred to the appropriate sections and committees for preliminary review and recommendation. These recommendations will be sent to the Conference Resolution Committee for its information and will be included in the materials sent to all delegates. Reports should be in a format similar to the reports of the Resolutions Committee, setting out the basic recommendation followed by reasons. Additionally, the report should separately set out the section or committee opinion as to the relative importance of the resolution to the legal profession and to the particular field of law concerned. All such reports should be forwarded to the Department of Sections and Committees for transmittal to the Conference Resolutions Committee no later than May 16.

Where a section or committee recommends disapproval or amendment of a particular resolution, it is encouraged to communicate and, where appropriate, to meet with the proponent to explain its position in greater

detail and attempt to agree upon a mutually acceptable compromise.

As soon as practical after the Conference adjourns, the Conference Executive Committee shall meet and assign each approved resolution proposing legislation to one of the following categories:

Category I - Resolutions to be directly sponsored by the Conference, and lobbied by the Legislative Representative.

Category II - Resolutions to be sponsored by local proponent bar associations coordinated and assisted by the legislative coordinator.

Category III - Resolutions to be referred back to the proponent local bar associations with no further State Bar or Conference action.

Category IV - Resolutions to be referred to the appropriate committee or section for further study.

Sections and committees to whom approved resolutions were previously referred for preliminary report will be immediately advised of this tentative determination by the Executive Committee and furnished copies of any amendments adopted by the Conference. Within thirty days thereafter they shall notify the Executive Committee and the Board Committee on Legislation of any disagreement they have with any of the proposals.

Resolutions in Categories I and II, upon review by the Board Committee on Legislation and approval by the Board of Governors, are placed on the Conference Legislative Program for the next legislative session.

Whenever a resolution adopted by the Conference of Delegates and designated Category I or II is disapproved

by any State Bar section or committee reviewing such resolution, the Executive Committee of the Conference or its designated representative shall correspond or meet with such disapproving section or committee in an effort to resolve the conflict. The process of resolution shall be commenced immediately upon identification of any dispute and shall be concluded no later than January 15 of the year succeeding the Conference.

The Board of Governors has reserved the authority to prohibit Conference sponsorship of any resolution in conflict with established State Bar policy and to also place any resolution on the State Bar's own legislative program.

Sections and committees shall submit no later than December 31, in-depth reports on resolutions in Categories I and II referred to them. These reports should generally follow the format set out in Attachment A. Each report should also list the name of a section or committee member who, on behalf of the section or committee may be called upon by the Legislative Representative to testify on the matter, or to accept or reject proposed amendments.

D. Court Rules and Legal Forms

Proposals to adopt new or changed rules of court or legal forms are normally initiated by the Administrative Office of the Courts or the Advisory Committee on Legal Forms and referred to a committee or section for study by the Secretary of the State Bar.

Such proposals should be immediately reviewed and, for the purpose of these procedures only, assigned a priority similar to that set out for bills of others (see Section II).

If a proposal would have little effect on the administration of justice or the particular area of law in which the section or committee is interested and it is felt that no position should be taken (Priority III), a short statement to that effect should be sent by the section or committee to the Administrative Office of the Courts with copy to the Board Committee on Legislation. If such a proposal would not affect the legal profession as a whole but is of such importance to the branch of law concerned that the relevant section or committee should make its position and recommendation known, (Priority II) a report setting out the comments and recommendations of the section or committee should be sent to the Administrative Office of the Court with copy to the Board Committee on Legislation.

If a proposal would affect the bar generally or is otherwise of such importance that the Board of Governors should take a State bar position, (Priority I) a report setting out the comments and recommendations of the section or committee should be submitted to the Board of Governors through the Board Committee on Legislation.

Recommendations for changes in court rules or forms initiated by a section or committee or by someone other than the Administrative Office of the Courts or the Joint Advisory Committee on Legal Forms, should be reported to the Board of Governors through the Board Committee on Legislation.

II.

PROCEDURE FOR HANDLING BILLS OF OTHERS

The Sacramento and San Francisco offices of the State Bar subscribe to the Legislative Bill Service and copies of all bills and amendments introduced are maintained in each office. The service includes daily agendas of the various legislative committees. The scheduled date of hearing on any bill may be obtained by telephoning the staff attorney for the section or committee.

All bills are screened by the Legislative Representative, and those bills which impact on a particular area of the law are forwarded to the section or committee responsible for that area for review and report. (Sections and Committees may, of course, review other bills coming to their attention from other sources). Sections and Committees may adopt their own internal procedures for review so long as the recommendation adopted is that of the section or committee and not solely that of an individual member.

On review, the section or committee should classify all bills as Priority I, II or III in accordance with the following criteria:

PRIORITY I

Those bills of such importance to the legal profession, the State Bar, or the public, that the State Bar should take an official position and exert its efforts toward the bill's passage, defeat or amendment. If the Board concurs in the assignment of this priority, it will adopt a State Bar position and direct the Legislative Representative to actively work for the adoption of that position by the legislature.

PRIORITY II

Those bills which, while they do not affect the legal profession as a whole, are of such importance to the branch of law concerned that the relevant section or committee should make its position known and exert its efforts towards the bill's passage, defeat or amendment; the position recommended on a Priority II bill is transmitted to the author and others interested by the Legislative Representative as that of the reporting section or committee and not that of the State Bar. The Legislative Representative will normally take no further action regarding these bills but must be kept advised of all subsequent communications between the section or committee and the legislature.

PRIORITY III

Those bills the passage or defeat of which would have little effect that the administration of justice or the particular area of law in which the reporting section or committee is interested, or on which a position should not be taken or advanced.

Immediately upon receipt of a bill, the section or committee or its authorized representative, should assign a priority and so notify its staff attorney. Within thirty days after receipt, the section or committee should confirm the priority assigned and for Priority I and II bills prepare a report setting out the section or committee's position on the bill and the reasons therefore. For bills in Priority I this report should be sent to the Board Committee on Legislation with copy to the Legislative Representative; for bills in Priority II, the report should be sent to the Legislative Representative and the Board Committee on Legislation advised of the position being taken.

The reason for the relatively short reporting time is that bills may be heard in the first policy committee thirty days after introduction. A section or committee position opposing or recommending amendments to a bill is most effective when made known prior to the first hearing. A position advanced after that date has less impact and frequently upsets both the author and the Legislative Hearing Committee who were not aware of possible problems at the time of hearing.

Sections and Committees are asked to confine their positions on bills of others to the following:

Support

Support if amended

Oppose

Oppose unless amended

Additionally the Board of Governors may adopt a "neutral" position on any bill; this position, meaning that the State Bar neither supports nor opposes a particular bill, has the effect of prohibiting any State Bar entity from taking or advocating any position as would a position of opposition.

If a "support if amended" or "oppose unless amended" position is adopted, the section or committee should set out, at least in general terms, an acceptable amendment. Further, unless a section or committee is opposed to the very concept of a particular proposal, it should attempt to recommend amendments which would make the bill acceptable.

Members of sections and committees may testify and lobby for their position on a bill unless the Board disapproves such actions and provided the Legislative Representative is notified in advance.

It is recognized that there will be occasions when a legislator wishes clarification of a section or committee position or a bill is amended and a hearing scheduled before the amendment can be considered by the section or committee as a whole. To insure a fast response in these instances, sections and committees should consider designating a member as a contact person for each Priority II bill and listing such person's name on the report submitted to the Legislative Representative.

III.

LEGISLATIVE LIAISON

No later than December of each year, the chair of each section and committee which reviews legislative bills, shall designate one of its members as its Legislative Liaison and so advise the Director, Department of Sections and Committees. The Legislative Liaison shall act as the principal contact person for all information concerning the committee or section activities in the legislative field. Liaison shall also be responsible for insuring that all bills referred to the committee or section are promptly assigned a priority which is reported to State Bar staff and that reports on Priority I and II bills are timely forwarded to the Legislative Representative.

IV.

RELATIONS WITH THE STATE BAR LEGISLATIVE REPRESENTATIVE

The Legislative Representative is the official State Bar representative to the legislature, the person to whom the legislators look for information concerning State Bar legislative activities and the primary conduit for the transmittal of information from the State Bar and its entities to the legislature. He is knowledgeable not only of the legislative processes, but also of the philosophies of individual members of the legislature and of the "politics" that is sometimes involved. One of his specific responsibilities is to see that the thoughts of a section or committee on a particular matter are transmitted to the responsible legislators and committees in the most efficient and effective manner. To properly fulfill his responsibilities he must be kept informed of all activities of each State Bar entity that affect bills in the legislature. To this end, any section or committee intending to appear before any Legislative committee must so advise the Legislative Representative at least 24 hours before such appearance. Further, he must be kept advised of all communications with a legislator by a section or committee. The State Bar Legislative Representatives are Ralph Simoni and Terry Flanigan. They are located in the State Bar Office in Sacramento (1210 K Street, 95814) and may be reached at (916) 444-2762. Both representatives can be of assistance in providing up-to-date information and advise as to how to best approach the legislature, and sections and committees are encouraged to make full use of their services.

V.

RELATIONS WITH THE STATE BAR
DIVISION OF COMMUNICATIONS

The State Bar Division of Communications is the official "spokesperson" for the State Bar and the primary source of information for the media and the public concerning State Bar activities. Sections and committees are urged to take advantage of the facilities of the Division and to keep it advised of matters under study which may be of general interest to the Bar or the public. Statements and releases to the media by a section or committee concerning a matter under study should be coordinated with the Division in advance. The Assistant Executive Director, Division of Communications, is George Bangs in the San Francisco Office of the State Bar; he can be reached at (415) 561-8283.

VI.

APPLICATION OF PROCEDURES

The foregoing procedures apply only to State Bar Standing and Special Committees, Commissions and Section Executive Committees. Other section committees, whether created by the By-laws or by the Section Executive Committee are entities of the Section and have only such authority as is delegated them by the Section Executive Committee.

If such a committee desires to testify or make any public statement concerning a bill or other matter, it may do so only with prior approval of the Section Executive Committee. Any such statement must clearly indicate it is the statement of the Section or the Committee and is subject to all restriction applicable to Section statements.

ATTACHMENT A

GENERAL FORMAT FOR INTERIM COMMITTEE
REPORTS OF CONFERENCE RESOLUTIONS AND
OTHER AFFIRMATIVE PROPOSALS

These reports should be in memorandum form addressed to the Board of Governors, Conference Executive Committee, or Board Committee on Legislation as appropriate. They should include three general areas:

- | | |
|-----------------|--|
| BACKGROUND: | Summary of present law as interpreted by the courts and a brief summary of the proposal, including reasons advanced by the proponent for its adoption. Where appropriate, discussion of any similar proposals previously considered by the State Bar or Legislature. |
| RECOMMENDATION: | Committee or section recommendation for State Bar action and the vote by which adopted. |
| DISCUSSION: | <p>Detailed discussion of reasons in support of committee or section recommendation:</p> <p>Reasons for any members's failure to agree with the majority or recommendation.</p> <p>Committee or section opinion as to the fiscal impact of the proposal and its importance to:</p> <p>A) The State Bar as a whole and,</p> |

B) The Committee's or section's particular area of the law.

EXHIBITS:

Where affirmative legislative action is recommended, attach a copy of proposed legislation in form for introduction in legislature; where disapproval is recommended, attach copy of proposal.

NOTE: If more than one proposal is being reported, they should be combined into one report, but each should be complete in and of itself so that it can be physically separated from the full report.

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Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

EDDIE KELLER, et al.,

Petitioners and Plaintiffs,

v.

STATE BAR OF CALIFORNIA, a public
corporation; ANTHONY M. MURRAY;
PATRICIA GREENE; GIRT K.
HIRSCHBERG, LELAND R. SELNA,
JR.; GEOFFREY VAN LOUKS;
THOMAS W. ERES; JOHN J. COS-
TANZO; GEORGE W. COUCH, III;
BURKE M. CRITCHFIELD; THOMAS

R. DAVIS; DIXON Q. DERN; RUTH

CHURCH GUPTA; DALE E. HANST;

LEONARD HERR; ROBERT A. HINE;

PHYLLIS M. HIX; MARTA MACIAS;

PHILLIP SCHAFER; CRAIG A. SIL-

BERMAN; DANIEL J. TOBIN; JAMES

D. WARD; AND JOON HEE RHO,

Respondents and Defendants.

) CIV. NO. 307168

) DECLARATION

) OF MARY G.

) WAILES IN

) SUPPORT OF

) DEFENDANTS'

) OPPOSITION

) OF MOTION

) FOR PRELIMI-

) NARY INJUNC-

) TION

) DATE:

) January 28, 1983

) TIME: 9:00 A.M.

) DEPT.: 16

)

)

)

)

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

MARY G. WAILES declares:

1. I am and, since June 12, 1951, continuously have been an active member of The State Bar of California. I have been continuously in the employ of The State Bar of California as an attorney since October 16, 1961. For approximately the first year of my employment I worked in a variety of areas, e.g., discipline, unauthorized practice of law, assisting State Bar committees, and assisting the Secretary of the State Bar in diverse matters.

2. Commencing in approximately September 1962, I began working with and assisting the Board of Governors; I also continued my involvement with State Bar committees. I assisted in preparing the agendas for the meetings of the Board of Governors; I processed, analyzed and prepared summary sheets for reports of State Bar committees for presentation to the Board of Governors for action. I attended all meetings of the Board of Governors and prepared their minutes.

3. I was appointed an Assistant Secretary of the State Bar effective July 29, 1970, and was elected Secretary of the State Bar effective June 1, 1978.

4. Since September 1970, I have been responsible for preparing and arranging the agendas for all meetings of the Board of Governors. I attend all meetings of the Board and prepare the minutes of its meetings and am responsible for advising appropriate persons and entities of the Board's actions and assuring that its directives are executed.

5. I am custodian of the records of the State Bar and supervise the maintenance of the files and records of the Board of Governors and the agendas, agenda materials, action summaries and inventories of Board of Governors committees.

6. The State Bar of California was created by statute in 1927. The State Bar is a public corporation. Article IV section 9 of the California Constitution provides that the members of the State Bar are all persons licensed to practice law in California. Its membership is divided into two classes: active and inactive. At the present time there are 77,320 active and 8,246 inactive members.

7. The State Bar is governed by a board known as the Board of Governors. The Board is charged with the executive functions of the State Bar and the enforcement of the provisions of the State Bar Act. The Board is provided by the Legislature with authority to make contracts, borrow money, own real and personal property, construct buildings, purchase and lease real and personal property, sell and exchange real and personal property, and do all acts necessary to carry out its functions. The Board is also authorized to aid in all matters pertaining to the advancement of the science of jurisprudence including such matters as concern the relations of the bar with the public. The Board is authorized to make appropriations and disbursements from the funds of the State Bar as are necessary to carry out the purposes of the State Bar Act.

8. The Board consists of twenty-two members. Fifteen members of the Board are elected by the members of the State Bar; through 1982 six were public members

appointed by the governor of the state; and thereafter the governor shares that power with the speaker of the assembly and the Senate Rules Committee; and one member is elected by the board of directors of California Young Lawyers Association from the membership of that association. For purposes of electing the attorney members of the Board, the state is divided into districts and members are elected from each district by the lawyers in that district. Each member of the Board serves for a term of three years, except that the member elected by the California Young Lawyers serves for a term of one year.

9. All State Bar functions are public as established by California law. Constitutional, statutory, rule and decisional duties fall into several categories, among which the principal ones are:

A. The State Bar, in the exercise of its constitutional duties, appoints four members of the Judicial Council and two members of the Commission on Judicial Performance.

B. The State Bar is the administrative arm of the Supreme Court of California. The State Bar is charged with the administration, implementation and enforcement of legislative and Supreme Court standards governing admission to practice law, and discipline of persons admitted to practice and those who would seek readmission after disbarment or resignation. The State Bar must administer, implement and enforce programs ordered by the California Supreme Court concerning specialization and the practical training of law students.

C. The State Bar is charged with enforcing the state law relating to unlawful practice of law and unlawful solicitation of professional employment.

D. The State Bar is charged with the administration, implementation and enforcement of state law governing law corporations.

E. The State Bar is required to assist the California Law Revision Commission, and it aids in all matters pertaining to the advancement of science of jurisprudence and to the improvement of the administration of justice in California.

F. The State Bar or a designated agency of the State Bar is required to evaluate the judicial qualifications of all potential appointees for judicial office whose names are submitted by the governor of California pursuant to law. The State Bar is also required to establish and promulgate rules and procedures regarding the investigation of the qualifications of candidates for judicial office.

G. The State Bar is required to establish, maintain and administer a system and procedure for the arbitration of disputes concerning fees charged for professional services by members of the State Bar or by members of the bar of other jurisdictions.

10. To assist the Board in carrying out its functions, the Board appoints committees composed of lawyers and public members who serve without pay. In addition, the Board has created sections to serve members of the Bar who are interested in special areas of the law. Members of the sections pay a small annual fee to help offset the costs of the sections activities.

11. Participation of all members in the activities of the State Bar is encouraged but not mandatory.

12. The functions of the State Bar are supported principally from membership fees. The maximum fees are established by the California Legislature. In 1979, 1980, 1981 and 1982, the legislature provided that the membership fee would remain in effect only for the term of the next year. Thus in 1982, the legislature provided that the fee bill for 1983 would remain in effect only until January 1, 1984. In the course of persuading the legislature to enact a fee bill each year so that the State Bar can continue to perform public functions, the State Bar presents to the legislature a summary of the State Bar's activities planned for the year in which the fee bill is to apply. Exhibit 1, entitled The State Bar of California 1982 Fee Bill Planning Materials, and dated March 20, 1981, is a true copy of the summary presented to the legislature by the State Bar in support of the 1982 fee bill. Exhibit 2, entitled The State Bar of California Multi-Year Fee Ceiling Background, and dated April 1982, is a true copy of the material presented to the legislature by the State Bar in support of the 1983 fee bill.

13. In order to determine the degree of support of the members of the State Bar for the programs and activities of the State Bar, the Board of Governors in 1980 conducted a survey of its membership. Exhibit 3 is a true copy of the summary of the survey conducted for the State Bar by the Field Research Corporation.

14. In 1982, in connection with the State Bar's responsibility to aid in improving the administration of

justice and advancing such matters as concern the relation of the bar with the public, the State Bar undertook a public education project pertaining to the maintenance of an independent judiciary. Exhibit 4, entitled The Case for an Independent Judiciary, a Public Education Project Prepared by The State Bar of California, is a true copy of the material prepared and disseminated by the State Bar in support of this project.

15. The State Bar legislative program is implemented in Sacramento pursuant to policies and procedures adopted by the Board of Governors. Exhibit 5, entitled Agenda Item, June - 204, Policies and Procedures for the Implementation of State Bar Legislative Programs, is a true copy of the policies and procedures approved by the Board of Governors in June of 1981. Attached as Exhibit A is the Final Report of the State Bar Legislative Representative setting forth the State Bar Legislative Program for 1982 and the results of that program.

16. Exhibit 6, entitled Procedures for State Bar Amicus Curiae Participation, is a true copy of the procedures approved by the Board of Governors in May of 1981.

17. Exhibit 7, entitled 1982 Conference of Delegates, Delegates Handbook With Rules of Procedure and Rules and Regulations for the Conference, is a true copy of the rules and procedures approved by the Board of Governors for the regulation of the Conference of Delegates.

18. Since its inception in 1927, the State Bar has maintained a legislative program in Sacramento in which lobbyists have been active. By the late 1930's, both volunteers and paid staff were engaged in lobbying. This

lobbying activity has continued as a major activity of the State Bar since that time to this day. At the present time, in order to enable it to carry out this activity, the State Bar maintains leased office space in Sacramento, three full-time lawyer lobbyists are retained under consultant contract, and nonlawyers are employed to assist the lawyer consultants. If the preliminary injunction sought by plaintiffs were to be granted, the legislative program would be disrupted and the State Bar would have to breach its lease and consultant obligations and incur liability for damages. Also, the employees of the State Bar in the Sacramento office would have to be terminated. If upon trial the injunction were removed it would be extremely difficult and costly to reestablish the Sacramento office of the State Bar with new and inexperienced personnel.

19. The State Bar legislative program is supported by the work of the Conference of Delegates and the committees and sections of the State Bar. These are assisted by professional support staff consisting of experienced full-time employees in the San Francisco office of the State Bar. If the preliminary injunction sought by plaintiffs were to be granted, the work of the Conference, committees and sections would stop. Local bar associations would have to be informed that their volunteer efforts toward processing resolutions for the Conference of Delegates would be to no avail; the work of the Executive Committee of the Conference of Delegates in preparing for next year's conference would have to stop; the 1983 Conference of Delegates meeting would probably have to be cancelled and, as a result, it is unlikely that the Annual Meeting could be held. The State Bar would have to terminate many members of the support staff. Other

staff might be reassigned, but to areas in which they have no experience.

20. Since its inception in 1927, the State Bar has utilized the president as an effective speaker on its behalf. He has articulated the ideas of the Board of Governors about the law, the legal system, and the administration of justice, particularly in California. He has explained the position of the Board of Governors, the programs of the State Bar, the administration of the State Bar and various other State Bar activities and concerns. He has participated in public forums for the purpose of educating the public, or stimulating public thought and discussion on the legal system and the administration of justice. If a preliminary injunction were issued prohibiting presidential speeches, the public would be deprived of information about State Bar programs and legal issues, and the membership would lose a valuable source of information about the State Bar.

22. If the preliminary injunction sought by plaintiffs were issued there would be difficulty in determining precisely what programs were affected because of the overlapping interrelationship of much of the State Bar's legislative and public information programs with its disciplinary and admission functions as well as other areas it regulates. I believe this would have a chilling affect on administration of all State Bar programs.

22. Attached as Exhibit B is the Report of Hemming Morse Inc., Certified Public Accountants. This report sets forth in Schedule 2 the estimated cost per member for the State Bar programs related to the following: judicial independence, Conference of Delegates, legislative affairs,

amicus curiae briefs and presidential outreach (presidential speaking programs). The report states that the total cost of all these programs in 1982 for each active member admitted less than three years is \$4.55, and the cost for each active member admitted more than three years is \$7.95.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 21, 1983

/s/ Mary G. Wailes
Mary G. Wailes

EXHIBIT A

AGENDA ITEM

NOVEMBER 201
Final Report of
Legislative
Representative

November 1, 1982

Attached final report, in five parts, of the Legislative Representative is as follows:

- I. 1982 State Bar Legislative Program pp. 1-5
- II. 1982 Conference of Delegates Legislative Program Sponsored Items Category I pp. 6-11
- III. 1982 Conference of Delegates Legislative Program Sponsored Items Category I to be Amended into Bills of Others pp. 12-13
- IV. 1982 Conference of Delegates Legislative Program Endorsed Items Category II pp. 14-17
- V. 1983 Tentative State Bar Legislative Program p. 18

THE STATE BAR OF CALIFORNIA
1210 K Street, Sacramento CA (916) 444-2762

Final Report of
Legislative
Representative

1982

STATE BAR LEGISLATIVE PROGRAM

- 1. AB 1209 (Harris)
Non-Evidentiary Hearings: Phone in Lieu of Personal Appearance
Adds Sections 575.5 and 1006.5 to the Code of Civil Procedure to require courts to use a phone

system in lieu of attorney's personal appearance for non-evidentiary hearings, and permit such use in other matters where it is feasible.

Origin: Proposal of Committee on Rules of Court Procedure.

Reference: Report of Committee on Rules of Court Procedure dated May 1980.

Board: July, 1980 - placed on 1981 Tentative Legislative Program. December, 1980 - placed on 1981 Legislative Program.

Final Action: Chapter 411, Statutes of 1982.

2. AB 1950 (Sher)

Depositions: Electronic Recording and Video Taping

Amends Sections 2019 of the Code of Civil Procedure. Clarifies current law pertaining to the electronic recording and video taping of depositions.

Origin: Recommendation of the Committee on the Administration of Justice.
1979 Conference Resolution 9-17

Reference: Committee on the Administration of Justice Annual Report, 1978.

Board: November, 1978 - placed on 1979 Legislative Program.

March, 1979 - dropped from Legislative Program.

July, 1979 - placed on Tentative Legislative Program.

October, 1979 - placed on 1980 Legislative Program.

April, 1980 - Unable to obtain author.

July, 1980 - placed on 1981 Tentative Legislative Program.

December, 1980 - placed on 1981 Legislative Program.

Final Action: Chapter 192, Statutes of 1982.

3. AB 1850 (Dennis Brown)

Labor Code: Employee Benefit Plans - Stock Incentives

Amends Section 408 of the Corporations Code to clarify the law regarding stock incentives offered to executive employees.

Origin: Business Law Section - Committee on Corporations

Reference: February, 1981, Report of Business Law Section and Report of Committee on Corporations.

Board: March, 1981 - placed on 1981 Legislative Program.

Final Action: Chapter 266, Statutes of 1982.

4. SB 1988 (Presley)

State Bar Act: First Year Law Student Examinations

Amends Section 6060 of the Business and Professions Code to repeal the requirement that special students take the first year law student examination.

Origin: Committee of Bar Examiners.

Reference: February 1981 memo from Committee of Bar Examiners.

Board: February, 1981 - placed on 1981 Legislative Program.

Final Action: Failed passage in Assembly Judiciary Committee. Rereferred to Board Committee on Legislation.

5. AB 3483 (Katz)

California Copyright Law: Conformity with Federal Copyright Act of 1976

Repeals Business and Professions Code Sections 14700, 14701, 14702, 14703, 14720, 14740. Repeals

and adds Civil Code Sections 980(a), 981(a), 982(a) and repeals Civil Code Section 983(a) to conform California Copyright Law to the Federal Copyright Act of 1976.

Origin: Executive Committee of the Patent, Trademark and Copyright Section.

Reference: Patent, Trademark and Copyright Section Report of October 27, 1981.

Board: December 19, 1981 – placed on 1982 Legislative Program.

Final Action: Chapter 574, Statutes of 1982.

6. AB 3625 (Martinez)

Juvenile Detention: 15 Day Review of Court Orders Re Commitment

Amends Sections 726 and 737 of the Welfare and Institutions Code to make review proceedings pursuant to Section 737 more effective and to require that counsel appear at all such review proceedings.

Origin: The Committee on Juvenile Justice.

Reference: January 9, 1981 Report of the Committee on Juvenile Justice; November 13, 1981 Report of the Committee on Juvenile Justice.

Board: December 19, 1981 – placed on 1982 Legislative Program.

Final Action: Failed passage in Senate Finance. Rereferred to Board Committee on Legislation.

7. AB 3576 (M. Waters)

Judicial Council Pleading Forms: Elimination of Mandatory Use

Amends Section 425.12 of the Code of Civil Procedure to extend the period of optimal use of

pleading forms for actions based on personal injury, property damage, wrongful death, unlawful detainer and breach of contract or fraud to January 1, 1985.

Origin: December 10, 1980 recommendation by Committee on Administration of Justice.

Reference: November 25, 1981 memo from Committee on Administration of Justice.

Board: December 19, 1981 – placed on 1982 Legislative Program.

Final Action: Chapter 272, Statutes of 1982.

8. AB 3657 (Rosenthal)

Reference to Referees: Compelling reference when after agreement one party changes mind

Amends Code of Civil Procedure Section 638(1) to permit a reference when after the parties have agreed to reference, one of the parties changes his or her mind.

Origin: Committee on the Administration of Justice January, 1982 Report to Board of Governors.

Reference: March 27, 1981, letter to Monroe Baer of CAJ from Attorney Lawrence Teplin.

Board: January 15, 1982 – placed on 1982 Legislative Program.

Final Action: Chapter 440, Statutes of 1982.

9. SB 1372 (Davis)

Subpoenas Duces Tecum, issuance by attorneys

Amends Section 1985 of the Code of Civil Procedure to clarify that attorneys can, in addition to issuing subpoenas for the attendance of witnesses, also sign and issue subpoenas duces tecum.

Origin: The Committee on the Administration of Justice.

Reference: January report by the Committee on the Administration of Justice to the Board of Governors.

Board: January 19, 1982 – placed on 1982 Legislative Program.

Final Action: Chapter 452, Statutes of 1982.

10. AB 3728 (Hart)

Application for relief against judgment: meaning of "six months" as used in Code of Civil Procedure Section 743

Amends CCP § 17(4), Civil Code § 14(4) and Government Code § 6804 to clarify meaning of "six months" as used in Code of Civil Procedure § 743.

Origin: Committee on Administration of Justice report to the Board January 19, 1982.

Reference: Letter from Mr. C. Russell King (February 19, 1981) to William F. Wenke.

Board: January 19, 1982 – Placed on 1982 Legislative Program

Final Action: Rereferred to Board Committee on Legislation.

11. SB 1924 (Petri)

Arbitration of Attorneys Fees: (1) attorney notice to client of right to arbitrate; (2) grounds for dismissal; (3) waiver of right to arbitration; (4) automatic entry of judgment; (5) non-exclusion of small claims court jurisdictional cases

Amends Sections 6200-6206 of the Business and Professions Code to specify that (1) an attorney must give written notice of the right to arbitrate to a client prior to or at the time of filing a lawsuit for the recovery of attorney's fees; (2) failure to

give notice would be grounds for dismissal of any action filed; (3) a client will have waived the right to arbitration if the client fails to request arbitration within thirty days of receipt of the notice; (4) an award, when it becomes final, would be automatically entered in the judgment books of the appropriate court; and (5) in addition, fee disputes falling within the small claims court jurisdiction would not be excluded from the program except as already provided.

Origin: Office of State Bar Court Report to Board January 19, 1982.

Reference: November 9, 1981 letter from Joyce Parsons, Office of the State Bar Court to Board Committee on Lawyer Services.

Board: January 19, 1982 – placed on 1982 Legislative Program.

Final Action: Chapter 979, Statutes of 1982.

12. *Notice to Health Care Providers: Discipline of attorneys for failure to comply with notice requirements*

Repeals Code of Civil Procedure Sections 364 and 365 which bar commencement of an action against a health care provider for the provider's neglect unless notice of intent to sue is given to the provider and provides that an attorney's failure to comply with Code of Civil Procedure Section 364 shall be a basis for professional discipline.

Origin: 1981 Conference of Delegates Resolutions 9-12 and 9-13 (Lawyers Club of Los Angeles County).

Reference: December 7, 1981 letter to the Board Committee on Legislation from Truitt A. Richey, Jr., Office of General Counsel.

Board: January 19, 1982 – placed on 1982 Legislative Program.

Final Action: Referred to Joint Committee of California Medical Association and State Bar. See Resolution 3-31-82.

13. AB 3780 (Berman)

State Bar Review of Qualifications of Judicial Candidates

Amends Section 12011.5 of the Government Code to specify that the State Bar shall evaluate candidates for judicial office and recommend to the Governor whether the candidate is *qualified* or *not qualified* as defined rather than the current system which uses a . . .

14. AB 3274 (Dennis Brown)

Eminent Domain Resolution of Necessity and Attorneys' Fees

Amends Section 1245.230 and 1250.410 of the Code of Civil Procedure and Section 7267.2 of the Government Code to require a condemning agency to make an offer to the property owner prior to adopting a condemnation resolution and to provide a more explicit test for award of attorneys' fees if the matter goes to trial.

Origin: Committee on Condemnation.

Reference: September 15, 1980, memo, Committee on Condemnation, to Board of Governors.

Board: January 1982, placed on 1982 Legislative Program.

Final Action: Chapter 1059, Statutes of 1982.

15. AB 2452 (Harris)

Statutory Will

Adds Chapter 2.1 (commencing with Section 56) to Division 1 of the Probate Code, to provide for a

statutory will and an accompanying form. The form would allow a testator to elect how to dispose of his or her assets upon death from four specific schemes or by intestate succession.

Origin: Estate Planning, Trust and Probate Law Section.

Reference: January 21, 1981 Report of Estate Planning, Trust and Probate Section.

Board: April 2, 1982 – placed on 1982 Legislative Program.

Final Action: Chapter 1401, Statutes of 1982

16. AB 1607 (Ingalls)

Inheritance Tax Referees

Amends Sections 609 and 657 of the Probate Code, Chapter 23 of Division 3 of the Probate Code, Article 3 of Chapter 10 of the Probate Code and to add Chapter 23 to Division 3 of the Probate Code and to amend Section 580(a) of the Civil Code and Section 726 of the Code of Civil Procedure relating to Probate Referees.

Origin: Executive Committee of the Estate, Planning, Trust and Probate Law Section.

Reference: March 23, 1982 Report and Recommendation of the Estate Planning, Trust and Probate Section, relating to the Miller and Rogers' initiatives to repeal inheritance taxes.

Board: May 1, 1982 placed on 1982 Legislative Program.

Final Action: Chapter 1535, Statutes of 1982.

THE STATE BAR OF CALIFORNIA
1210 K Street, Sacramento CA (916) 444-2762

Final Report of
Legislative
Representative

1982

CONFERENCE OF DELEGATES
LEGISLATIVE PROGRAM

SPONSORED ITEMS CATEGORY I

17. AB 707 (McAlister)
Property Exempt from Execution: Motor Vehicle

Amends Section 690.2 of the Code of Civil Procedure to increase the value of a debtor's equity in an exempted vehicle from one not exceeding \$500.00 to one not exceeding \$1,000.00.

Origin: Lawyers' Club of Los Angeles County.
Reference: 9-6-79.

Ex-Com Liaison: Bert Tigerman

Final Action: Chapter 1364, Statutes of 1982.
18. AB 1883 (Larry Stirling)
Arbitration Proceedings: Issuance of Subpoenas

Amends Section 1282.6 of the Code of Civil Procedure to require a neutral arbitrator to issue subpoenas and subpoenas duces tecum signed but otherwise blank to the party requesting them.

Origin: San Diego County Bar Association.
Reference: January 1981 Committee on Administration of Justice Report. 9-31-79

Ex-Comm Liaison: Bert Tigerman

Final Action: Chapter 108, Statutes of 1982.

19. AB 1439 (Floyd)
Assigned Counsel: Compensation & Standards

Amends Penal Code Section 987.2 to guarantee adequate compensation for competent representation of persons who cannot afford to retain their own counsel. In addition, amends Penal Code Section 987.6 to increase state funding for defense services to not less than 20 percent of actual costs to counties and further specifies that the Conference of Delegates urges the State Legislature to fund the State Public Defender's office sufficiently so that it may provide adequate appellate representation of defendants with respect to whom the death penalty has been imposed, and further, to fund the California Supreme Court sufficiently so that it may adequately reimburse appointed counsel in capital cases.

Origin: Santa Clara County Bar Association; San Francisco County Bar Association.

Reference: 2-15 & 2-16-80.

Ex-Com Liaison: Bert Tigerman

Final Action: Failed passage in Assembly Ways and Means Committee. Rereferred to Executive Committee Conference of Delegates. No further action.

20. AB 1983 (Harris)
Subpoena Duces Tecum: Service by Mail on Non-party Records Custodian

Adds Section 1987.6 to the Code of Civil Procedure to permit service of a subpoena duces tecum on the custodian of the records of a non-party business by return receipt mail.

Origin: Alameda County Bar Association.

Reference: January 1981 Committee on Administration of Justice Report. 5-8-80

Ex-Com Liaison: Bert Tigerman

Final Action: Failed in Assembly Judiciary Committee. Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

21. *ACA 78 (Berman)*

Judges: Teaching at Public Law Schools

Amends Article VI, Section 17, of the California Constitution to permit teaching by judges at public law schools within standards set by the Commission on Judicial Performance.

Origin: Beverly Hills Bar Association.

Reference: 2-8-81

Ex-Com Liaison: Thomas Smegal

Final Action: Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

22. *AB 707 (McAlister)*

Homestead Exemption: Increase in Value

Amends Civil Code Section 1260 to increase the limit of the homestead exemption for any head of a family or person 64 years of age or older to seventy-five thousand dollars (\$75,000), and for any other person to fifty thousand dollars (\$50,000).

Origin: Lawyers' Club of Los Angeles County.

Reference: 3-7-81

Ex-Com Liaison: Christine Helwick

Final Action: Chapter 1364, Statutes of 1982.

23. *AB 1759 (Chacon & Frazee)*

Subdivision Map Act: Offers For Sale Permitted Before Filing of Final Map

Amends Government Code Section 66499.30 to permit offers to sell or lease, or contracts to sell or lease, parcels of real property prior to the time the required final subdivision map is filed. Maintains the prohibition against actual sale, lease, or financing prior to the filing of the final map.

Origin: Orange County Bar Association.

Reference: 3-11-81

Ex-Com Liaison: Colin Wied

Final Action: Chapter 87, Statutes of 1982.

24. *AB 2913 (Goggin)*

Evidence: Psychotherapist Privilege

An act to amend Section 1026 of, and to repeal Evidence Code Section 1028, which applies to criminal proceedings only and restricts the psychotherapist privilege of Evidence Code Section 1010 to psychiatrists and psychologists.

Origin: Beverly Hills Bar Association.

Reference: 5-8-81

Ex-Com Liaison: Philip Hammer

Final Action: Vetoed by Governor. Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

25. *AB 3684 (Ingalls)*

Misdemeanor Procedures: Waivers of Personal Presence

Amends Penal Code Section 977, subdivision (a) to make clear that an individual charged with a misdemeanor may appear through counsel, allowing

the trial court judge the right to require presence of the defendant only if the defendant is on parole or probation and at sentencing.

Origin: San Diego County Bar Association

Reference: 5-9-81

Ex-Com Liaison: M. John Carson

Final Action: Rereferred to Executive Committee Conference of Delegates. Moot.

26. AB 3651 (Harris)

Probate: Defines "lease" to Include Option to Purchase

Adds Section 845 to the Probate Code to define the word "lease" to include a lease with an option to purchase and further amends Sections 162, 328, 333, 441, 630, 680, 681, 1000, 1025.5 and 1200.5 of the Probate Code.

Origin: Los Angeles County Bar Association.

Reference: 6-4-81

Ex-Com Liaison: Michael Blaylock

Final Action: Chapter 520, Statutes of 1982.

27. *Inheritance Tax: Orphan's Exemption*

Amends Revenue and Taxation Code Section 13801, subdivision (b) to provide that the orphan's exemption is in addition to the exemption applicable to minor children.

Origin: Alameda County Bar Association

Reference: 6-9-81

Ex-Com Liaison: Michael Blaylock

Final Action: Moot per Repeal of Inheritance Tax.

28. *Inheritance Tax: Limited Power of Appointment*

Amends Revenue and Taxation Code Section 13693 to provide that a power given to a spouse as trustee to invade trust corpus for the benefit of that spouse, when limited by an ascertainable standard, is not a power of appointment within the meaning of the section.

Origin: Alameda County Bar Association.

Reference: 6-11-81

Ex-Com Liaison: Michael Blaylock

Final Action: Moot per repeal of Inheritance Tax.

29. AB 622 (Willie Brown)

Paternity and Child Support: Compensation of Counsel Appointed for Indigent Defendants

Amends Welfare and Institutions Code Section 11350.1 to provide that counsel appointed to represent indigent defendants in paternity or child support proceedings shall be compensated for such services out of the county general fund.

Origin: The Bar Association of San Francisco

Reference: 7-13-81

Ex-Com Liaison: Philip Hammer

Final Action: Vetoed by the Governor. Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program. Recatergorized as Category IV.

30. AB 622 (Willie Brown)

Paternity and Child Support: Compensation of Counsel Appointed for Indigent Defendants

Adds Sections 11354, 11355 and 11356 to the Welfare and Institutions code to provide that counsel

appointed to represent indigent defendants in paternity or child support proceedings shall be compensated for such services out of the county general fund and that the defendant may be ordered to repay all or a portion of such compensation.

Origin: San Diego County Bar Association.

Reference: 7-14-81

Ex-Com Liaison: Philip Hammer

Final Action: See Item 29. —

31. SB 203 (Rains)

Rate of Interest: Judgments

Adds Section 1033.1 to the Code of Civil Procedure to provide that the rate of interest on judgments shall be ten per cent per annum.

Origin: San Diego County Bar Association.

Reference: 9-5-81

Ex-Com Liaison: Thomas Smegal

Final Action: Chapter 150, Statutes of 1982

32. AB 843 (Berman)

Arbitration; Tolling; Intent; Plaintiff's Request for Arbitration

Amends Code of Civil Procedure Sections 1141.12, 1141.16 and 1141.17 to specify when an election to arbitrate must be filed, to specify the tolling period for arbitration cases, and to clarify the legislative intent with regard to reimbursement of counties.

Origin: Lawyers Club of Los Angeles.

Reference: 9-9-81

Ex-Com Liaison: Colin Wied

Final Action: Failed passage in Senate. Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

33. AB 3712 (Larry Stirling)

Good Faith Settlement Writ of Mandate

Amends Code of Civil Procedure Section 877.6 to provide that an order by the court determining that a settlement was or was not made in good faith is not appealable and that the party aggrieved by such an order may petition the reviewing court for a writ of mandate.

Origin: Sacramento County Bar Association.

Reference: 9-18-81

Ex-Com Liaison: Christine Helwick

Final Action: Governor Vetoed. Referred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

34. AB 3712 (Larry Stirling)

Sister State Judgments: Municipal Court Jurisdiction

Amends Code of Civil Procedure Section 1710.20 (part of the revised Uniform Enforcement of Foreign Judgments Act; 9A Uniform Laws Annotated 488) to require that sister state judgment enforcement proceedings involving judgments for \$15,000 or less be filed in the appropriate municipal or justice court rather than the superior court.

Origin: The Lawyers' Club of San Francisco.

Reference: 9-31-81

Ex-Com Liaison: M. John Carson

Final Action: See Item 33

35. AB 3454 (Bates)
Psychotherapist/Patient Privilege: Holder Where Guardian of Conservator Appointed

Amends Evidence Code Section 1013 to provide that where a guardian or conservator has been appointed for the patient, the patient is still holder of the privilege of proceedings involving the continued existence of the guardianship or conservatorship.

Origin: Bar Association of San Francisco

Reference: 9-34-81

Ex-Com Liaison: Thomas Smegal

Final Action: Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

36. AB 2635 (Farr) – Formerly SB 1944 (Sieroty)
Visitation Rights of Stepparents

Amends Section 4351 of, and adds Section 4351.1 to the Civil Code to authorized the court in a proceeding under the Family Law Act to make orders with respect to visitation of minor stepchildren.

Origin: Western San Bernardino and San Diego County Bar Associations

Reference: 7-6-81

Ex-Com Liaison: Philip Hammer

Final Action: Chapter 1071, Statutes of 1982.

37. AB 2567 (Ingalls)
Unaccredited Law Schools

Amends Section 6060 of and adds Article 3.5 to Chapter 4 of Division 3 of the Business and Professions Code and to repeal Chapter 3.5 of the Education Code to establish minimum statutory standards for unaccredited law schools and to eliminate after 1989 for purposes of qualifying for the general bar examination the study of law in law offices, judges chambers and correspondence schools.

Origin: AB 304 (1981)

Final Action: Failed passage in Assembly Judiciary Committee. Rereferred to Board Committee on Legislation.

THE STATE BAR OF CALIFORNIA
1210 K Street, Sacramento CA (916) 444-2762

Final Report of
Legislative
Representative

1982

CONFERENCE OF DELEGATES
LEGISLATIVE PROGRAM

SPONSORED ITEMS CATEGORY I

To Be Amended Into Bills of Others

38. Preliminary Mechanic's Lien Notice

Amends Section 3097 of the Civil Code to add the owner of real property as one given an estimate of the total price and a description of the labor, equipment and materials to be furnished in a proposed construction contract.

Origin: San Fernando Valley Bar Association.

Reference: 4-3-79

Ex-Com Liaison: Bert Tigerman

Final Action: Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

39. *Subdivision Map Act*

Amends Government Code Section 66424.1 to provide that a unit of land, or any portion thereof, may be subdivided more than one time pursuant to the provisions of the Subdivision Map Act prior to the completion of an equalized county assessment roll that reflects the creation of the unit to be subdivided.

Origin: Orange County Bar Association

Reference: 3-9-80

Ex-Com Liaison: Colin Wied

Final Action: Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

40. *SB 1108 (Speraw)*

Zoning Appeals: 180 Day Statute of Limitations

Amends Government Code Section 65907 to provide that the 180-day statute of limitations on actions challenging local administrative zoning decisions applies to charter cities.

Origin: National Lawyers Guild, Alameda County Lawyers Division

Reference: December 1980 Committee on the Environment Report. 5-19-80

Ex-Com Liaison: Christine Helwick

Final Action: Chapter 1426, Statutes of 1982

41. *Trusts: Compensation of Trustee's Advisors*

Adds Section 1122.1 to the Probate Code to permit trustees to pay attorneys, accountants and other advisors reasonable fees without prior court approval.

Origin: Los Angeles County Bar Association.

Reference: December 1980 Report, Estate Planning, Trust and Probate Section. 8-9-80

Ex-Com Liaison: Burt Tigerman

Final Action: Rereferred Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category I.

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ENDORSED ITEMS CATEGORY II

42. *AB 629 (Kapiloff)*

Increases Felony Bad Check & Grand Theft Threshold

An act to amend Sections 476a, 484g, 484h and 487 of the Penal Code to increase the threshold amount for passing worthless checks to \$250, and to increase the minimum dollar amount for grand theft from \$200 to \$400.

Origin: Sacramento County Bar Association and San Diego County Bar Association.

Reference: Criminal Law Section Reports, February, 1979. 4-3 & 4-7-79 and 6-3 & 6-4-79

Ex-Com Liaison: Bert Tigerman

Final Action: Chapter 80, Statutes of 1982

43. *Workers' Comp: Increased Penalty for Delay in Payment*

Amends Labor Code Section 5814 to increase the penalty for unreasonable delay in payment of any workers' compensation award.

Origin: Lawyers' Club of Los Angeles County.

Reference: 3-10-80

Ex-Com Liaison: Colin Wied

Final Action: Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category II.

44. *AB 3618 (Kapiloff)*

Withdrawal of Lis Pendens: Deletes Requirement of Dismissal of Underlying Cause of Action

Amends Code of Civil Procedure Section 409.55 to delete requirement that agreement to withdraw lis pendens be accompanied by dismissal of underlying cause of action.

Origin: San Diego County Bar Association.

Reference: 3-1-81

Ex-Com Liaison: Christine Helwick

Final Action: Chapter 560, Statutes of 1982.

45. *AB 3552 (Robinson)*

Unlawful Detainer: Damages on Lease Forfeiture

Adds Section 1174.5 to the Code of Civil Procedure to provide that a tenant's liability for damages, if any, pursuant to Civil Code Section 1951.2 is not cut off by a judgment forfeiting the lease in an unlawful detainer action.

Origin: Orange County Bar Association.

Reference: 3-3-81

Ex-Com Liaison: Bert Tigerman

Final Action: Chapter 488, Statutes of 1982.

46. *SB 1998 (Watson)*

Carnal Abuse: Sterilization of Certain Offenders

Repeals Penal Code Section 645, which permits a court to order sterilization of a person found guilty of carnal abuse of a female under the age of 10.

Origin: Women Lawyers Association of Los Angeles

Reference: 5-4-81

Ex-Com Liaison: Philip Hammer

Final Action: Governor vetoed. Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category II.

47. *AB 3530 (Rosenthal)*

Conservatorship: Substituted Judgment

Amends Probate Code Section 2585 to provide that no person has any greater duty than does the conservator to propose actions involving substituted judgment specified in Probate Code Section 2580.

Origin: Beverly Hills Bar Association

Reference: 6-6-81

Ex-Com Liaison: Michael Blaylock

Final Action: Failed passage in Senate Judiciary Committee. Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category II.

48. *Custody Investigation: Availability of Reports to the Parties*

Adds Section 4602.1 to the Civil Code to provide that any report prepared pursuant to Civil Code Section 4602 must be furnished to the parties absent a court order to the contrary.

Origin: San Fernando Valley Bar Association.

Reference: 7-12-81

Ex-Com Liaison: Colin Wied

Final Action: Hold

49. *AB 3569 (Moore)*

Domestic Violence: Duration, Termination, and Extension of Temporary Restraining Order

Amends Code of Civil Procedure Section 548 to allow the court to determine on a case-by-case basis the appropriate duration of temporary restraining orders in cases of domestic violence; provides that such orders shall not exceed one year duration unless the parties agree otherwise.

Origin: Women Lawyers' Association of Los Angeles.

Reference: 7-18-81

Ex-Com Liaison: M. John Carson

Final Action: Chapter 359, Statutes of 1982

50. *AB 3607 (Moorhead)*

Domestic Violence: Restitution to Providers of Related Services

Amends Code of Civil Procedure Section 546 to allow courts to order perpetrators of domestic violence to make restitution to any individual or agency that provides services to the family or household member as a direct result of the abuse.

Origin: Women Lawyers' Association of Los Angeles.

Reference: 7-19-81

Ex-Com Liaison: M. John Carson

Final Action: Chapter 578, Statutes of 1982.

51. *AB 3607 (Moorhead)*

Domestic Violence: Restitution for Psychological Care

Amends Code of Civil Procedure Section 547 to allow courts to order perpetrators of domestic violence to make restitution to the family or household member for expenses for psychological care undertaken as a result of the abuse.

Origin: Women Lawyers' Association of Los Angeles.

Reference: 7-20-81

Ex-Com Liaison: M. John Carson

Final Action: Chapter 578, Statutes of 1982.

52. *AB 3689 (Ingalls)*

Discovery: Expert Witnesses, Exchange of Information

Amends Code of Civil Procedure Sections 2037, 2037.3 and 2037.5, amends and renumbers Section 2037.4 and adds a new Section 2037.4 to provide that the exchange of expert witness lists shall include expert witnesses' reports and writings and

to require expert witnesses to be made available for deposition.

Origin: Los Angeles County Bar Association

Reference: 9-22-81

Ex-Com Liaison: Thomas Smegal

Final Action: Chapter 1400, Statutes of 1982.

53. *AB 3689 (Ingalls)*

Discovery: List of Expert Witnesses; Extending Time for Exchange

Amends Code of Civil Procedure Section 2037.1 to provide that the party making a demand to exchange lists of expert witnesses has the same additional time within which to comply as does the party on whom the demand is made.

Origin: Los Angeles County Bar Association

Reference: 9-25-81

Ex-Com Liaison: Thomas Smegal

Final Action: Chapter 1400, Statutes of 1982.

54. *Minimum Automobile Insurance Requirements*

Amends Sections 16056, 16377, 16430, 16435, 16451, 16500 and 16550 of the Vehicle Code, Section 11622 of the Insurance Code and Section 3631 of the Public Utilities Code to specify that the minimum level of financial responsibility for every driver and owner of a motor vehicle in the event of personal injury, death or property damage shall be \$50,000/\$100,000 and \$15,000 rather than the current level of \$15,000/\$30,000 and \$5,000.

Origin: Orange County Bar Association

Reference: 2-10-81

Final Action: Rereferred to Executive Committee Conference of Delegates. Placed on 1983 Legislative Program in Category II.

55. *AB 1029 (Levine)*

Priority Persons Entitled to Letters: Estranged Spouse

Amends Section 422 of the Probate Code. Provides that priority of a surviving estranged spouse as a person entitled to be granted letters of administration of the estate of a person dying intestate shall be lower than that of the heirs.

Origin: Beverly Hills Bar Association.

Reference: 5-1-79

Ex-Com Liaison: Michael Blaylock

Final Action: Rereferred to Executive Committee Conference of Delegates. Hold.

THE STATE BAR OF CALIFORNIA
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TENTATIVE STATE BAR LEGISLATIVE PROGRAM

56. *Workers Compensation: Attorneys Fees Against Lien Claimant*

Amends Section 4903.2 of the Labor Code to permit the award of attorney fees against lien claimants.

Origin: Committee on Workers Compensation.

Reference: Report of Committee on Workers Compensation of April 15, 1982

Board: May 1, 1982 placed on Tentative Legislative Program.

57. *Exclusion of Condemnation Cases from Operation of the Lis Pendens Law*

Amends Code of Civil Procedure Section 409(b) and Code of Civil Procedure Section 1250.150 to exclude condemnation cases from operation of Lis Pendens law.

Origin: Condemnation Committee March 9, 1982.

Reference: Report of Board Committee of Legislation May, 1982 Board Meeting, Agenda 203.

Board: May, 1982 placed on Tentative Legislative Program.

58. *Amelioration of the Effect of Reduced Funding of California Legal Services Program*

Adds Sections 285.2, 285.3 and 285.4 of the Code of Civil Procedure to: (1) permit legal service attorneys to withdraw from a case when the agencies ability to service existing clients is impaired, (2) permit tolling or various limitations and procedural periods upon the withdrawal from representation by legal services attorneys, and (3) permit the court to appoint any lawyer or law firm to represent an indigent client without compensation on a showing of good cause.

Origin: The Committee on the Administration of Justice.

Reference: "The Report of the Committee on the Administration of Justice on Representation Problems Under Funding Cutbacks", March 2, 1982.

Board: March 6, 1982 placed on Tentative Legislative Program.

EXHIBIT B

HEMMING MORSE, INC.

Certified Public Accountants
1700 South El Camino Real, San Mateo, California 94402

January 19, 1983

Board of Governors
The State Bar of California

At your request, we have performed the procedures enumerated below with respect to actual costs expended during the ten-month period ended October 31, 1982 and the estimated costs for the two-month period ended December 31, 1982 by the State Bar of California, associated with the following:

- Lobbying the California State Legislature
- The Conference of Delegates Program

In addition, we have performed the procedures enumerated below with respect to costs expended by the State Bar of California, associated with the following activities performed during the period indicated:

- The submission of briefs amicus curiae for the year ended December 31, 1982
- President Anthony M. Murray's speaking program for the period October 26, 1982 to December 31, 1982
- The public information project entitled, "The Case For An Independent Judiciary" for the period September 12, 1982 to October 25, 1982

our examination was made solely to assist you in evaluating the reasonableness of those costs, and our report is

not to be used for any other purpose. The procedures we performed are summarized as follows:

- A. We examined the accounting controls relating to cash disbursements, cash receipts and payroll for the State Bar of California, and found there to be separation of duties and supervisor review of accounting work performed by employees.
- B. We compared revenues developed by the State Bar of California, relating to membership dues by class, related penalty charges and interest to the appropriate general ledger accounts as of October 31, 1982, and the 1982 budget, and verified allocations to each membership class.
- C. We compared actual costs and revenues for items described in B. and D. for the year ended December 31, 1981 to the 1981 budget to assure ourselves that amounts budgeted are, in fact, comparable to actual activity.
- D. We compared costs developed by the State Bar of California, relating to the Conference of Delegates Program and Legislative Affairs (Lobbying) to the appropriate general ledger accounts as of October 31, 1982 and the 1982 budget.
- E. We examined documentation supporting the costs developed by the State Bar of California, relating to the project entitled "The Case For An Independent Judiciary", speeches by President Anthony M. Murray and submitting briefs amicus curiae.
 - 1. Documentation examined included lists of hours worked by staff on the projects mentioned above and the appropriate hourly wage rate. We verified staff hours to individual time sheets and invoices and hourly wage rates to payroll registers.

Because the above agreed-upon procedures do not constitute an examination made in accordance with generally

accepted auditing standards, we do not express an audit opinion on the revenues collected and the costs expended during the appropriate time periods related to the areas mentioned above. However, no matters came to our attention that caused us to believe that adjustments might be required. Had we performed additional procedures or had we made an examination of the financial statements in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the accounts and items specified above and does not extend to any financial statements of the State Bar of California, taken as a whole.

Our findings were in agreement with the accompanying schedules prepared by the State Bar of California. Schedule 1 is an analysis of membership revenues, penalties and interest by class, and Schedule 2 is the estimated costs for certain State Bar of California activities.

/s/ Hemming Morse, Inc.
Accountants

THE STATE BAR OF CALIFORNIA
ANALYSIS OF MEMBERSHIPS
FOR THE YEAR ENDED DECEMBER 31, 1982

<u>Length of Membership</u>	<u>Membership Revenue By Class</u>	<u>Allocation of Penalty and Interest Revenue</u>	<u>Total Revenue By Class</u>	<u>% To Total</u>	<u># Member By Class</u>
<u>Active</u>					
Less Than 3 Years	\$ 1,684,235	\$121,180	\$ 1,805,415	14.6%	17,621
3 Years or More	9,691,110	698,860	10,389,970	84.3%	58,852
<u>Inactive</u>					
All Memberships	129,980	9,960	139,940	1.1%	6,499
TOTAL REVENUE	\$11,505,325	\$830,000	\$12,335,325	100.0%	82,972

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THE STATE BAR OF CALIFORNIA
ESTIMATED COSTS OF CERTAIN STATE BAR ACTIVITIES
INCURRED DURING THE YEAR ENDED
DECEMBER 31, 1982

Project Names	Note	Estimated Cost	Cost Per Member		
			Active With Membership Less than 3 Yrs.	Active With Membership 3 Yrs. or More	Inactive
JUDICIAL INDEPENDENCE	(1)	\$ 7,180	\$.06	\$.10	\$.01
CONFERENCE OF DELEGATES	(2)	226,657	1.88	3.24	.38
LEGISLATIVE AFFAIRS	(3)	288,127	2.39	4.13	.49
AMICUS CURIAE BRIEFS	(4)	2,643	.02	.04	.00
PRESIDENTIAL OUTREACH	(5)	16,158	.13	.23	.03

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Effective Time Periods:

- (1) For the period September 12, 1982 to October 25, 1982
- (2) Actual costs for the ten-month period ended October 31, 1982 and estimated costs for the two-month period ended December 31, 1982
- (3) Actual costs for the ten-month period ended October 31, 1982 and estimated costs for the two-month period ended December 31, 1982
- (4) For the year ended December 31, 1982
- (5) For the period October 26, 1982 to December 31, 1982

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Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

EDDIE KELLER, et al.,

Petitioners and Plaintiffs,

v.

STATE BAR OF CALIFORNIA, a public
corporation; ANTHONY M. MURRAY;
PATRICIA GREENE; GIRT K.
HIRSCHBERG; LELAND R. SELNA,
JR.; GEOFFREY VAN LOUKS,
THOMAS W. ERES; JOHN J. COO-
TANZO; GEORGE W. COUCH, III;
BURKE M. CRITCHFIELD; THOMAS
R. DAVIS; DIXON Q. DERN; RUTH
CHURCH GUPTA; DALE E. HANST;
LEONARD HERR; ROBERT A. HINE;
PHYLLIS M. HIX; MARTA MACIAS;
PHILLIP SCHAFER; CRAIG A. SIL-
BERMAN; DANIEL J. TOBIN; JAMES
D. WARD; AND JOON HEE RHO,

Respondents and Defendants.

) CIV. NO. 307168

) DECLARATION

) OF

) MAGDALENE

) Y. O'ROURKE

) IN SUPPORT OF

) DEFENDANTS'

) OPPOSITION

) OF MOTION

) FOR PRELIMI-

) NARY INJUNC-

) TION

) DATE:

) January 28, 1983

) TIME: 9:00 A.M.

) DEPT.: 16

)

)

)

STATE OF CALIFORNIA

)

) SS

CITY AND COUNTY OF SAN FRANCISCO

)

1. I am, and since June 25, 1976 have continuously been, an active member of the State Bar of California. I have been employed as an attorney in the Office of General Counsel of the State Bar of California since July, 1978. In that capacity my responsibilities include giving advice and counsel to the Board of Governors and the staff on a wide variety of matters and representing the State Bar in state and federal courts.

2. I am personally familiar with the overall operation, activities and programs of the State Bar and particularly familiar with activities related to lobbying and communications.

3. Information contained in paragraphs 4 through 9 of this declaration is based on my own personal knowledge and Exhibits 1 and 2. Information contained in paragraphs 5 through 53 is based on my personal research of State Bar Journals, Exhibits 8, 9, and 10, and Gilb Corinne, *Self-Regulating Professions and the Public Welfare, A Case Study of the California Bar*, dissertation presented for the Ph.D. in American Civilization, Radcliffe College, May 1956.

Present Activities of the State Bar - The Status Quo

4. The State Bar is at the present time performing numerous activities which fall into broad categories in which the State Bar has continually functioned since its creation in 1927. The broad categories are: admissions,

enforcing professional standards and enhancing competence, improving the administration of justice and advancement of the science of jurisprudence, supporting legal services delivery and access, and providing member services.

5. In matters of admission of applicants for licenses to practice law in California, the State Bar acts as an arm of the California Supreme Court. Accreditation of law schools is another State Bar activity in the category of admissions.

6. Some of the activities included in the category of enforcing professional standards and enhancing competence are: acting as an arm of the California Supreme Court in matters of discipline; certification of Practical Training of Law Students; development and revision of the Rules of Professional Conduct; providing ethics opinions and an ethics hotline; enforcement in the area of unauthorized practice of law; administering the Client Security Fund, mandatory fee arbitration; continuing education and specialization certification.

7. The category of improving the administration of justice and advancing the science of jurisprudence includes the following activities: review study, and recommendation on numerous pieces of legislation by State Bar sections and committees, and the Conference of Delegates; sponsorship of legislative measures; maintains a legislative representatives' office staffed by full time professional lobbyists in Sacramento; provides assistance to the Judicial Council on proposed rule changes and legislative measures related to Court reform and other matters; and provides assistance to the Law Revision

Commission, pursuant to statute, in studying, drafting, and making recommendations related to law reform; provides to the Governor, on an informal basis upon request, evaluations and advice on proposed legislation; assists the Governor, pursuant to statute, in the judicial appointment process by providing for evaluation and recommendations on judicial nominees by the 25-member Commission on Judicial Nominees Evaluation, all of whom are appointed by the Board of Governors of the State Bar; and provides information to the bar and the public for the purpose of education regarding the legal profession and the legal system. The State Bar continues its constitutional duties of appointing four members of the Judicial Council and appointing two members of the Commission on Judicial Qualifications.

8. Activities included in the category of supporting legal services delivery and access are: serving as an information clearing house, conducting workshops, providing minimum standards for lawyer referral services; and assistance to the private bar in developing voluntary legal services programs.

9. Included in membership services are activities such as the annual meeting; programs of Sections in 11 substantive areas of law; publication and information programs; group insurance; certifying and registering law corporations; participation through local bar associations in the Conference of Delegates; (See Exhibit 7.) participation in activities of 22 standing committees; and special liaison activities with local bars. (For detailed discussion of present activities, see Exhibits 1 and 2.)

Creation of the State Bar

10. The State Bar of California was created as a public corporation with enactment by the Legislature of the State Bar Act (Stats. 1927, p.38) which became effective July 29, 1927.

11. The State Bar Act became law as a result of a generally recognized need for a public body to enhance the public's confidence in the legal profession and the legal system by systematically regulating the admission and discipline of attorneys and improving the administration of justice.

12. From its inception the work of the State Bar in the areas of admissions, discipline and the administration of justice has been undertaken as a public service that an integrated bar authorized statute is uniquely qualified to undertake.

Activities of the State Bar in the 1920's

13. Within the first year of the State Bar's existence (a) Rules of Procedure for the effective processing and consideration of complaints against attorneys were adopted; (b) Rules of Professional Conduct were adopted for Supreme Court approval in order to establish high standards of attorney behavior; and (c) Rules Regulating Admission to Practice Law were adopted setting new standards for admission in order to better protect the public from those unqualified or unfit to practice law.

14. During the State Bar's first year of existence, members organized five major sections and commenced

work. The sections were: Civil Procedure, Criminal Law and Procedure, Courts and Judicial Officers, Regulatory Commissions, and Professional Conduct.

15. The section reports at the first annual meeting in 1928 show that the Sections studied and made recommendations on a wide variety of topics, including judicial selection and conduct. The Section on Courts and Judicial Officers specifically recommended that the Bar support adoption of what was known as the "Commonwealth Plan" for selection of judges. That plan was subsequently proposed as a Constitutional amendment.

16. In addition to the Sections, a number of committees were formed to assist in law reform. They also began their work and reported at the first annual meeting.

17. The effective delivery of legal services to indigents and to persons of moderate means was immediately identified as a matter of vital concern to the State Bar in the area of law reform. The Legal Aid Committee was formed in 1928 and it encouraged and fostered, working through local bar associations, the creation of local legal aid committees and panels of attorneys in each community. Many such panels were established to provide free legal services for individuals in the lower middle class.

18. Other committees that were formed and made recommendations and reports in 1928 include the Committee on Constitutional Amendments and the Committee on Revision of the Corporation Laws. The work of the latter Committee would in 1931 ultimately result in the Legislature enacting a complete revision of the corporation laws in California for the first time in 50 years.

19. State Bar lobbying was done during the early years by volunteers. In 1929 a State Bar committee first recommended that the State Bar maintain a paid lobbyist in Sacramento during sessions of the Legislature for the purpose of assisting the members of the Legislature in safeguarding the interests of the people in all matters which concern The State Bar of California. That recommendation was not immediately acted upon.

Activities of the State Bar in the 1930's

20. As a result of State Bar investigation and recommendation the State Bar Act was amended in 1931 to proscribe ambulance chasing, running and capping (Stats. 1931, ch. 1043, p. 2198; Bus. and Prof. Code sec. 6150 et seq.)

21. Public confidence in the profession was eroded by extensive practice of law by unlicensed corporations and persons. Early in the 1930's vigorous efforts and activities were begun to enforce the unauthorized practice of law provisions of the State Bar Act.

22. By the beginning of the 1930's the Section Department of the State Bar had been developed. The Section Department appears in form and operation to be the forerunner of the Conference of Delegates which came into existence in 1934.

23. The 1933 report of The Committee on Legislation was the real genesis of the Conference of Delegates. The Board of Governors at its April 1934 meeting approved changes in its rules and created the Conference of Bar Association Delegates.

24. During the early 1930's the need for paid lobbyists to be present in Sacramento during legislative sessions continued. That need was acknowledged by both the State Bar Committee on Legislation and members of the Legislature, not only for State Bar measures but to assure that the expertise of the organized bar was available to the Legislature on measures of interest to the bar and the public generally. By the late 1930's in addition to volunteers the Secretary of the State Bar served as lobbyist.

25. Cooperation between the State Bar and the Judicial Council in the area of administration of justice began in the 1930's. It continues to the present time and the Board of Governors now appoints four members of the Judicial Council.

26. In 1931, the State Bar's first public education program came into being when the Board of Governors appointed the Statewide Committee of Fifteen. The purpose of the program was to educate lawyers with respect to their responsibilities to the public and educate the public as to the functions of the profession and the legal system. The program was carried out through the news media speakers bureaus, publications, State Bar committees and local bars.

27. In 1933 the first Committee on the Administration of Justice was formed for the purpose of coordinating State Bar activities in this area.

Activities of the State Bar in the 1940's

28. The work of the State Bar which was begun in the 1930's continued and was expanded during the 1940's.

29. The State Bar continued and expanded its cooperation with and assistance to the Judicial Council in the area of the administration. Together, the State Bar and the Judicial Council studied and redrafted the rules governing appellate procedures; sponsored legislation designed to give the Judicial Council power to prescribe rules for appellate procedure in civil and criminal cases; worked on completing new rules of appellate procedure; conducted an intensive study for reforming and reorganizing the existing lower court structure and revising article VI of the California Constitution.

30. Among other matters relating to the administration of justice, the State Bar performed a leadership role in the modernization of the law relating to survival of tort actions and achieved all of its major goals in supporting the enactment of the California Administrative Procedure Act in 1947 following nearly ten years of State Bar study and recommendations.

31. With the commencement of the American involvement in the Second World War, the State Bar took an active part in assisting with the United States' war effort. At the request of the U.S. Navy, the State Bar organized a speaker's bureau to encourage enlistment of volunteers. The State bar, in cooperation with local bar associations, organized over 300 speakers throughout California.

32. Additionally, pursuant to the State Bar's war assistance program, large numbers of California attorneys rendered free legal advice and assistance to military personnel and their dependents under the provisions of the Soldiers' and Sailors' Civil Relief Act. The State Bar also assisted Civil Defense officials in surveying ordinances and regulations relating to civil defense in all California municipalities as a basis for reorganizing California's defenses. The American Bar Association awarded The State Bar of California its Award of Merit in 1942 in recognition of the State Bar's war assistance program.

33. In January 1943, Governor Warren requested the assistance of the State Bar in evaluating proposed appointees to Municipal or Superior Court vacancies to determine whether there was anything in the character, training, experience or professional conduct of the appointee which would militate against the appointment. The State Bar accepted that responsibility and has since continually performed that function.

34. Governor Warren also sought the assistance of the State Bar in 1943 in expanding the role of the Commission on Judicial Appointments (formerly called the Commission on Judicial Qualifications) to include all judges as opposed to only Supreme Court and Court of Appeals justices. The State Bar responded by appointing a Committee on Selection, Qualification, Tenure and Removal of Judges which proposed amendments to section 26 of article VI of the California Constitution relating to the Commission on Judicial Appointments which would, among other things, increase the size of the Commission, increase the number of votes necessary for confirmation of an appointment and require that all

appointments to the Municipal and Superior Court be confirmed by the Commission.

Activities of the State Bar in the 1950's

35. In response to the widespread public dissatisfaction with trial court delays and the inefficiency of the system of administration of justice, the State Bar, along with the Judicial Council, undertook and co-sponsored the first major court reorganization in California, studying and sponsoring changes in (a) trial court procedure and practice, (b) the structure and work of the trial courts, including the elimination of the police courts which had come under great criticism in their operations, (c) completion of the revision of appellate court procedure, and (d) completion of the revision of criminal law and procedure. This joint project also remains as California's last major court reorganization. It was possible because of the continued cooperation between the State Bar and the Judicial Council with the support of local bar groups.

36. In other major activities relating to the administration of justice, the State Bar played an integral role in the creation of the California Law Revision Commission which replaced the Code Commission in 1953.

37. The State Bar also intensified its examination of the effective delivery of legal services in the 1950's. The State Bar's Committee on Legal Aid and Lawyer Reference Services worked with local bar associations in encouraging the adoption and expansion of local legal aid facilities and the establishment of lawyer reference services throughout the State. Working with the Committee

on Legal Aid and Lawyer Reference Services, the Board of Governors considered rules and forms for lawyer reference plans and approved outlines of addresses on lawyer reference plans and legal aid facilities which were made available to speakers for use in acquainting the public with the necessity of making voluntary legal services available to everyone at moderate cost and without cost to the poor. During the 1950's the State Bar also undertook studies into methods of effectively delivering legal services to the middle class. As will be seen later, these studies resulted in proposal and rules which fostered and encouraged group legal service plans in California.

38. In 1959 a special study committee appointed by the Board first recommended the establishment of a client security fund to be funded by membership dues. Legislation to provide for the establishment of the Client Security fund was enacted in 1971 (Stats. 1971, ch. 1338, Bus. & Prof. Code sec. 6140.5 et seq.)

Activities of the Bar in the 1960's and 1970's

39. By 1960 the extensive efforts and work of the State Bar in the areas of judicial selection and tenure, as in other areas was well recognized. That work included extensive cooperation with the Judicial Council, studying, drafting and sponsoring legislation and informing and educating the bar and the public with respect to selection and tenure.

40. New impetus was given to State Bar activity in this area with the approval by the California voters of

Proposition 10 in the November, 1960 election. Proposition 10 amended Article VI, the judicial article of the California Constitution by creating a new Commission on Judicial Qualifications to supersede the Commission on Qualifications. The powers of the Commission were increased and the number of members of the Commission was expended from three to eleven, including two members to be appointed by the Board of Governors of the State Bar. Proposition 10 also augmented the membership of the Judicial Council to include four members to be appointed by the Board of Governors. (See Exhibit 8.)

41. Since Proposition 10 gave the State Bar constitutional duties to perform, it also made the State Bar a constitutional agency in the judicial branch of government. (See Exhibit 8.)

42. In 1966 the voters of California approved a revision of the California Constitution, including Article VI. That revision made no substantive change with the provisions related to the State Bar. (See Exhibits 9 and 10.)

43. The State Bar remained active in the 1960's and 1970's in providing assistance to the Legislature, the Judicial Council and the Law Revision Commission on matters relating to the administration of justice. The State Bar was instrumental in the adoption of new pre-trial procedure rules, the adoption of the Uniform Commercial Code, the Evidence Code, and the most recent comprehensive revision of the Corporation Code.

44. State Bar proposals resulted in the reform of the system of appointing inheritance tax appraisers and in providing for their selection on merit and competitive examination.

45. The State Bar co-sponsored with the Judicial Council the initial enactment permitting arbitration as an alternative to court trial in superior court cases and assisted the Judicial Council in implementing the system of arbitration. Subsequently, the State Bar supported improvements in the Arbitration Act and was directed by the Legislature to prepare and adopt rules for the selection of arbitrators in civil cases.

46. In 1967, the Senate supported the "Merit Plan for the Selection of California Judges" which had been formulated and sponsored by the State Bar with the assistance of the Judicial Council and the Governor's office. The State Bar also formulated and sponsored proposals for changing the composition of the Commission on Judicial Appointments to include non-lawyers as well as lawyers and judges and to improve the Commission's ability to investigate gubernatorial nominees.

47. During the 1960's and 1970's, the State Bar, in cooperation with the Judicial Council, drafted and sponsored revisions in the code of Civil Procedure regarding procedures on appeal, the bases for jurisdiction and service of process, and adoption of the Family Law Act and revisions in family law rules and forms.

48. The State Bar was instrumental in procuring the enactment of the Civil Discovery Act, and, in cooperation with the Attorney General and others, studied and supported amendments to the Administrative Procedures Act regarding discovery in administrative proceedings. The State bar also made numerous studies and recommendations concerning pre-trial detention and release (bail reform).

49. in 1972, upon State Bar recommendation, the Supreme Court adopted rule 983 of the California Rules of Court pertaining to counsel pro hac vice to make attorneys who are permitted to appear as counsel pro hac vice subject to the jurisdiction of California courts and the disciplinary jurisdiction of the State Bar with respect to any acts of such attorney occurring in the course of his appearance. Additionally, the Supreme Court charged the State Bar with the duty of monitoring such activities by requiring persons desiring to appear as counsel pro hac vice to serve a copy of the application on the State Bar.

50. Following several years of consideration by the Board of Governors and the Committee of Bar Examiners, the Board adopted "Rules for the Practical Training of Law Students" in January 1970. The goal of these rules is to provide law students with the practical training which will enable them to better serve the public when they are in fact admitted to practice.

51. As a result of the work of several special committees appointed by the Board of Governors which commenced in the late 1950's, the Board of Governors adopted and the Supreme Court approved rule 20 of the Rules of Professional Conduct (present rule 2-104) in 1970 to foster and encourage the formation and participation by attorneys in group legal service plans. According to reports filed with the State Bar, by mid-1976 there were more than a thousand group legal service arrangements operating in California. The State Bar also adopted and the Supreme Court approved rule 23 of the Rules of Professional Conduct (present rule 2-104) to encourage plans for prepaid legal services.

52. Additionally, the State Bar further expanded its activities in encouraging the establishment of lawyer reference services by community groups in addition to local bar associations.

53. In an effort to reduce the costs of legal services, the State Bar also studied and proposed legislation for the training, education and certification of legal assistants.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on January 21, 1983 at San Francisco, California.

/s/ Magdalene Y. O'Rourke
Magdalene Y. O'Rourke
